

THE DOMESTIC VIOLENCE REVIEW
INTO
THE ADMINISTRATION OF JUSTICE
IN MANITOBA

Submitted to
The Honourable Minister of Justice
James C. McCrae

by

Commissioner: Dorothy Pedlar
August 1991

Commissioned by:
**Manitoba
Justice**



DVR

THE DOMESTIC VIOLENCE REVIEW
INTO
THE ADMINISTRATION OF JUSTICE
IN MANITOBA

Commissioner: Dorothy Pedlar
Director: Candice Minch

August 1991

ACKNOWLEDGEMENTS:

During the course of the Domestic Violence Review, I had the opportunity to meet with hundreds of people across Manitoba. All of these people set aside time in a concern to achieve solutions to address the prevalence of domestic violence. Their sincere and candid input is greatly appreciated and proved invaluable.

A special thanks is given to the many women who shared their personal experiences from past abusive relationships, and the particular issues they faced.

My gratitude to Candice Minch is immense. Without her assistance in every aspect of the Review, from attending the numerous consultations to the writing of the report, the task of the Review would have been insurmountable. I also acknowledge the valuable administrative assistance received from Karen Maduke and Barbara Robson.

I wish to express my appreciation to the Honourable Minister of Justice, James C. McCrae for providing to me the opportunity to conduct the Domestic Violence Review.

**THE DOMESTIC VIOLENCE REVIEW INTO
THE ADMINISTRATION OF JUSTICE IN MANITOBA**

Table of Contents

Executive Summary.....	vi
I. Background to the Domestic Violence Review	1
II. Introduction.....	3
III. Final Report and Recommendations.....	5
A. Recommendation of Principle	7
1. Domestic Violence-Free Province.....	7
B. Response to Victims	8
1. Community Advocacy Response Team for Domestic Violence.....	8
2. Ongoing Support Services for Survivors of Domestic Violence and their Children.....	10
3. Victim Impact Statements	12
C. Response to Abusers	13
1. Program Component for Abusers.....	13
D. Criminal Justice System	15
1. Charging Directive.....	15

E.	Police Response	16
1.	Police Education.....	16
2.	Dispatch Response at Police Departments.....	18
3.	Police Protocol	20
4.	Recording of Charges and Convictions.....	27
5.	Media Disclosure.....	27
6.	Police Assistance for Safe Passage.....	28
7.	Outstanding Warrants (Victims).....	29
8.	Role of the Manitoba Police Commission.....	30
F.	Crown Response	32
1.	Crown Attorney Education.....	32
2.	Prosecution of Offences	33
3.	Protocol and Procedures	34
G.	Legal and Paralegal Assistance for Victims	39
1.	Legal Advocacy Office for Women in Abusive Relationships	39
2.	Victim Services in Criminal Justice System	40
3.	Paralegal Assistance.....	41
4.	Women's Advocacy Program	42

H.	Court Response	44
1.	Judicial Education.....	44
2.	In-Camera Proceedings.....	45
3.	Disposing of Domestic Assault Cases in Reasonable Time Frame.....	46
4.	Family Violence Court	47
5.	Orders of Probation.....	49
6.	Preliminary Hearings.....	51
I.	Corrections/Probation Response.....	52
1.	Corrections/Probation Education.....	52
2.	Corrections Protocol.....	53
3.	Institutional Programming for Offenders.....	55
4.	Probation Protocol	56
5.	Domestic Violence Programming.....	59
6.	Breaches of Order of Probation	60
J.	Parole Response	61
1.	Parole Response	61
2.	Pardons.....	64

K.	Orders of Protection/Restraining Orders.....	65
1.	Powers of Arrest.....	76
2.	Judicial Interim Release (Bail).....	69
3.	Police Recording of Orders of Protection.....	70
4.	Police Response to Breaches of Orders of Protection.....	71
5.	Crown Response to Breaches of Orders of Protection.....	72
6.	Peace Bonds.....	74
7.	Legislative Initiatives.....	76
L.	Administration of Justice - General	78
1. - 14.		78
M.	Regional Justice Committees	81
1.	Establishment	81
N.	Control of Firearms and Ammunition	82
1.	Orders of Prohibition	82
2.	Firearms Acquisition Certificates.....	83
3.	Provincial Legislation.....	86
4.	Amendments to the Criminal Code of Canada.....	87

O.	Medical Response	88
1.	Medical Staff Education.....	88
2.	Medical Protocol for Domestic Violence	89
P.	Income Security Response.....	90
1.	Minimum Allowable Stay in Shelters.....	90
2.	Provision of Telephone Service to Victims of Domestic Violence.....	92
3.	Transportation to Shelters and Emergency Housing.....	93
Q.	Education Response	95
1.	School Curriculum.....	95
R.	Follow-up to the Domestic Violence Review Report.....	96
1.	Creation of Implementation Committee to Respond to Report.....	96
IV.	Conclusions.....	97
	Summary of Recommendations.....	Appendix 1
	Provincial Consultations	Appendix 2
	Criminal Code of Canada — Selected Offences Pertaining to Partner Abuse	Appendix 3

Executive Summary

The Domestic Violence Review was commissioned by the Minister of Justice, James C. McCrae in late November, 1990 to examine the justice system's response to domestic violence directed against women. The mandate of the Review encompasses eight major areas pertaining to the justice system, namely: investigation and law enforcement procedures; processing of charges; interim procedures pending trial and sentence; restraining orders; training of those individuals involved in the law enforcement system; firearms acquisition certificates and control of weapons; probation and institutional treatment of offenders; and access to legal and paralegal assistance for victims.

The Domestic Violence Review was established as a fact-finding mission involving an information base of extensive province-wide consultations. Meetings were conducted with those individuals and groups who could best identify the issues and point toward constructive reform. These included direct service and advocacy groups for women, justice personnel ranging from the police to correctional services, and health care personnel. Feedback also was received from a number of women who have been victims of domestic violence, including some who have been involved with the justice system.

The Review was mandated to then present recommendations to specifically address adequate protection for and sensitive treatment of women by the justice system. The individuals and groups consulted were able to provide an accurate and revealing picture of the current situation and response to domestic violence in the province.

The final report of the Review has been shaped by the course of the consultations and reflects four cornerstones being established to address the issue of domestic violence in general: community, consistency, communication and commitment. The recommendations begin with an overall declaration of principle and include the following sections: response to victims; response to offenders; police response; Crown response; legal and paralegal assistance for victims; Court response; corrections/probation/parole response; orders of protection; control of firearms and ammunition; medical response; income security response; and education response (See Appendix 1 for a summary listing of the recommendations).

The consultations made it clear that while the response of the justice system to domestic violence is critical, the larger issue of the role of the community must be addressed to achieve long-term preventative measures. Without greater awareness at the community level, along with concrete action and initiatives, the justice system and other crisis services will only continue to react after the occurrence of the abuse in virtual isolation.

Several recommendations in the final report address the role of both the community and the various components within the community to bring about change by way of long-term services for victims and their children, and abusers. Counselling and support programs in the community must be made available to abused women and their children so that they can deal with the aftermath of the abusive situation. The current gap in legal and paralegal assistance for women in abusive situations is also highlighted. Alternately, community-based programs for abusers will allow for a longer term focus to assist men and reinforce the changing of their abusive behavior. The educational system has an important role to play in the community by ensuring that students receive an awareness of the social dynamics of abuse.

The remaining cornerstones of consistency, communication and commitment reflect the assertion that the various components of the community, starting with the general public and including the justice system, must work together to deal with domestic violence. In particular, the justice system must work toward effective training, protocols and policies that will promote commitment, consistency and communication within and between components of the system so that safety and sensitive treatment for women is ensured. Included are the police, Crown, judiciary, probation, corrections and parole.

The Community Advocacy Response Team concept for abused women underlines the importance of the police working in liaison with community shelter and advocacy services to enable optimum support and assistance for women during the critical phase of initial response. The issue of programs for offenders at the institutional and probation phases reflects the orientation that abusers must accept responsibility for their actions with an educational focus addressing the social context in which partner abuse occurs. Orders of protection and firearms control are outlined to present a series of initiatives that will work toward greater safety for abused women.

The final report and recommendations are not intended to single out any particular area of response, but instead should be viewed as a comprehensive proposal to effect real change in the way that domestic violence is viewed and responded to in Manitoba. In addition, while some recommendations can be implemented immediately, there are other recommendations which require further examination prior to becoming established. The creation of an Implementation Committee has been recommended to facilitate and assist in the development of the response to the Domestic Violence Review Report. The Minister of Justice and government of Manitoba, by calling for the Domestic Violence Review, have made clear their commitment to take action. This commitment was also expressed by the individuals and organizations consulted.

THE DOMESTIC VIOLENCE REVIEW INTO THE ADMINISTRATION OF JUSTICE IN MANITOBA

BACKGROUND TO THE DOMESTIC VIOLENCE REVIEW:

The Domestic Violence Review was established by Manitoba Justice Minister Jim McCrae in November of 1990. The Review was commissioned to determine the most effective procedures to "ensure that victims are adequately protected and sensitively treated by the justice system."

An examination of the existing law, policies and procedures and the forwarding of recommendations form the basis of the Review. Particular regard has been given to:

- investigation and law enforcement procedures;
- processing of charges;
- interim procedures pending trial and sentence;
- restraining orders, including both bail and Family Maintenance Act orders;
- training of those involved in the enforcement system;
- firearms acquisition certificates and control of weapons;
- probation and institutional treatment of offenders;
- access to legal and paralegal assistance for victims.

While it is recognized that all forms of abuse are unacceptable and must not be tolerated, particularly abuse that occurs within family relationships, the focus of the Domestic Violence Review is the abuse of women by their partners. It is also recognized that some men are abused by their partners. However, the abuse of women is much more prevalent with far-reaching consequences for both the family and society as a whole.

While neither a comprehensive study of the actual extent of domestic violence throughout Manitoba nor one addressing the Aboriginal population in particular have yet been undertaken, figures have been extrapolated and provide the following startling picture. Based on feedback from service providers and some past studies, Manitoba Family Dispute Services estimates that one out of six women in Manitoba has been abused. Based on findings from a number of sources, Ikwe-Widdjiitwin, the Aboriginal Women's Shelter in Winnipeg, concurs with the conclusion that the rate of abuse is much higher for Aboriginal women. While some of the particular needs of Aboriginal women have been addressed in the Review, Aboriginal justice issues are the focus of a separate Inquiry.

Throughout this report the term partner abuse is used rather than spousal abuse. Partner abuse is defined as abuse occurring in any relationship where the individuals are or have been dating, cohabiting, married, separated or divorced.

Many forms of abuse exist - physical, sexual, psychological, emotional and financial. It must be acknowledged that the criminal justice system can respond only to those forms of abuse that constitute offences under the Criminal Code of Canada and/or any other applicable legislation.

In order to gather information and formulate recommendations for the Domestic Violence Review, consultations with key individuals and organizations working in the area of domestic violence throughout the province were identified as the information base.

INTRODUCTION:

The Domestic Violence Review recognizes that the response to domestic violence in Manitoba, and indeed all areas of Canada, has been improved in substantive ways over the last decade. Education and awareness regarding the pervasiveness and severity of domestic violence was brought to the forefront by women's advocacy groups in the early 1980s.

As a result of the growth of women's shelters and effective lobbying from women's organizations, the federal and provincial governments began to look at ways to improve the response to domestic violence. The introduction of the Manitoba Attorney-General's Directive in 1983, requesting police officers to institute criminal proceedings in all cases of spousal assault, was an important step forward.

Prior to the charging initiative, criminal proceedings against abusive spouses were all but non-existent, except in the most serious cases. The new policy was the first major step by the justice system to raise awareness not only among police and the legal community, but the general public as well. The message was that domestic assault was not simply a family matter but was a criminal offence and was to be treated far more seriously than in the past. No longer were police to deal with domestic violence informally by simply de-escalating the violence and attempting to mediate between the parties involved. Of major significance was the fact that the police, and not the victim, were to take responsibility for the laying of charges, and the further fact that the offender was to be held accountable by society for criminal behavior.

The Charging Directive is now into its ninth year of operation and the issue of how domestic violence is being responded to in the province must be addressed. Despite continued public education from women's organizations and government, the abuse of women by their partners persists and recent years have been witness to a number of tragedies where women have lost their lives. One woman who loses her life as the result of domestic violence is one too many.

The Domestic Violence Review has a mandate to examine the existing law, policies and procedures in the justice system and to forward recommendations that are designed to improve the overall response to domestic violence.

Consultations throughout the province were extensive and included meetings with women's shelters, women's advocacy and resource groups, Municipal Police and R.C.M.P., prosecutors, defence counsel, family law practitioners, probation and corrections personnel, health care personnel and a number of family violence committees. In order to ensure the gathering of accurate information, the consultations were held in-camera and confidentiality was assured. A listing of the individuals and organizations consulted is given in Appendix 2.

The Domestic Violence Review also was able to speak directly with a number of women who have been the victims of domestic violence and have experienced involvement with the justice system. Other individuals provided written commentary to the Review. In addition, the Review met with a group of men who have been convicted of crimes arising from domestic violence.

The Domestic Violence Review was not designed to collect statistics and data on crimes of domestic violence, but was a fact-finding exercise, where information was received from those who can identify the issues and concerns most accurately—namely those individuals and groups who have been involved or work in the domestic violence field. Their input and sharing of information proved invaluable in providing a comprehensive picture of the existing situation and the directions needed to improve the overall response to domestic violence.

The Domestic Violence Review recognizes that all of the foregoing recommendations do not fall under the jurisdiction of the Manitoba Minister of Justice, but all of the recommendations have as their objective means that can be taken to ensure a safer environment for women and their families in Manitoba.

FINAL REPORT AND RECOMMENDATIONS:

Community, Consistency, Communication and Commitment

The Domestic Violence Review into the Administration of Justice in Manitoba has as its overall objective the improvement of the justice system response to domestic violence in the province. Although the mandate of the Review focuses on the justice system in particular, the consultations held throughout the province have resulted in four cornerstones being established to address the issue of domestic violence in general. The recommendations contained in the report will work only if there is a concerted effort to incorporate the following: Community, Consistency, Communication and Commitment.

1. The consultations have established that the community as a whole has a responsibility to acknowledge the pervasiveness of and to deal effectively with domestic violence.

No single area can be designated as the one responsible for dealing with the issue of domestic violence. Instead, community input, beginning with the general public including community-based responses and leading up to the justice, educational, medical and social service systems must be incorporated in the overall response. While each component will have differing responsibilities, all will work together for a common goal - providing an optimum response to domestic violence. The eradication of domestic violence over the longer term is without question the ultimate goal of any endeavors undertaken.

While the criminal justice system has been identified as the major area for examination and recommendations in the Review, its role is a reactive one that traditionally has responded to a specific and allegedly isolated incident after the fact. The legal system can initiate many positive changes in the response to domestic violence once it has occurred. However, the role of the community, including all government departments, in fostering a preventative orientation must be emphasized in seeking long term solutions to the incidence of domestic violence. Each community must take an active role in the condemnation and prevention of violence against women in relationships.

2. The consultations have shown the necessity of consistency in bringing about an effective response to domestic violence.

There must be a consistent response to victims of domestic violence and offenders by not only the components of the justice system, but also the community as a whole. These responses must include sensitivity and respect for victims, and continual reinforcement that the behavior of the abuser will not be tolerated. Only with consistency will there be a comprehensive effort to effect real change and improvement and as such, protocols and standards implemented must be uniformly and equitably applied.

3. The consultations have indicated that an effective response to domestic violence must involve increased communication among the components of the community.

In order for a comprehensive strategy to be undertaken, effective communication both within and between components of the community must take place. In particular, components of the justice system must work together to achieve the goal of increased effectiveness by ensuring all relevant information is communicated to both the victim and segments of the system at each stage of the proceedings. The justice system must also recognize and utilize the community services and other programs available for victims and offenders of domestic violence.

4. The consultations have clearly identified that there is a need for an overall commitment to deal effectively with domestic violence.

Each individual and organization that was consulted expressed a desire to work toward the best possible response to domestic violence. Some frustration was expressed by individuals and organizations who perceived varying degrees of commitment by other components of the community. The need for a genuine commitment to hold abusers accountable for their actions and to ensure that appropriate services are available to abused women, children and abusers was a predominant theme throughout the consultations. This need must be met throughout the community.

A. RECOMMENDATION OF PRINCIPLE

1. Domestic Violence-Free Province

It is recommended that the Manitoba government formally declare that the province and its residents advocate and practice living in a domestic violence-free environment, where family violence and partner abuse are not acceptable and will be acted upon as criminal offences.

At face value, the designation of a domestic violence-free province may appear to be nothing more than rhetoric. However, one of the basic tenets of the Domestic Violence Review, that of community, can be mobilized and activated by a declaration that all domestic violence is not acceptable and will not be tolerated.

Municipal and other local government bodies can make a similar declaration for their residents. In addition, national, provincial and local agencies which encompass social, religious, cultural, business, legal, medical and sports groups, can reach their members by making this assertion.

The community must take an active role in reducing and eliminating the presence of domestic violence. All communities are encouraged to establish committees to respond to the issue of family and partner abuse. Public awareness regarding domestic violence that emanates from as many sources as possible, will serve as a critical starting point in addressing the destructive nature of all forms of abuse. A preventative stance in domestic violence will ultimately be the key to its denouncement and elimination.

Note: As a result of the recommendations contained in the Women's Initiative Report commissioned by the Manitoba Government (March 1989), the province of Manitoba has endorsed the philosophy that abuse is a crime and must be stopped and a public awareness campaign was undertaken in February, 1990.

B. RESPONSE TO VICTIMS

1. Community Advocacy Response Team for Domestic Violence

It is recommended that Community Advocacy Response Teams be created to provide advocacy, support and assistance to women and their children immediately after police have responded to a situation of domestic violence .

A direct link to community resources for abused women in the form of a Community Advocacy Response Team is an integral component of providing a woman with support and assistance at a time when she may be especially in need - right after the abusive incident and/or having disclosed the incident to the police. A number of critical decisions may have to be made, including attendance at a medical facility and/or going to a shelter/safe house. The Response Team can assist with these decisions and provide other essential services such as crisis intervention, information, and assistance in obtaining supportive counselling. Written material dealing with orders of protection, available resources, and government policy concerning partner abuse also can be provided. Most of all, the Response Team has the function of providing a supportive advocate who has the understanding and the time to spend with the woman and assist her in dealing with many different issues at that time.

The Response Team would work in close liaison with and be notified by the police when their attendance is required. This would include all situations where the abuser is removed from the residence by the police or the woman has been taken to a medical facility. The Response Team would operate most effectively under the direction of a women's shelter.

The decision of whether the woman and any children remain in the family residence or be escorted to a shelter is a decision to be made by the woman in consultation with the Response Team. Uprooting the woman and children is not to be viewed as the only course of action. Liaison and contact with a shelter and available resources can take place no matter where the woman is residing. In communities where a shelter is not available, there must be community-based women's resource centres where ongoing services and support for women and children are provided.

If the woman decides to remain in her residence, this can be communicated by the Response Team to the police, whereby the offender will be notified that he is not to return to the residence until further advised.

The Federal Government recently announced a \$136 million family violence fund, of which \$21 million is to be used for Shelter housing for women. The Federal Government must consider the allocation of funds for residential resource centres for men where they can receive counselling and services that address their abusive behaviour. The feasibility of such facilities must be examined in the context of removing the abuser from the family residence. A strong message delivered by domestic violence service providers during the consultations was that shelters for women and children should not be the only option available to escape an abusive situation and that the abusive partner should have access to a facility to use if the woman decides to stay in the family residence. Presently, many women feel that they have lost their liberty by having to seek refuge in a shelter, while the abuser is "free" on bail.

The creation of a Community Advocacy Response Team* (CART) as a pilot project in at least two centres in Manitoba will allow for initial development and refinement before the CART concept is expanded to other areas of the province. It is imperative that existing services for abused women be at the forefront in formulating and implementing the Community Advocacy Response Team.

- * The concept of the Community Advocacy Response Team has been formulated from the Albuquerque, New Mexico Domestic Abuse Response Team. The Team consists of trained volunteers who work in liaison with the police and provide assistance to the abused woman after the police have made the initial response. An innovation in Manitoba is currently in the formulating stages and involves a shelter emergency response team for women at medical facilities.

RESPONSE TO VICTIMS

2. Ongoing Support Services for Survivors of Domestic Violence and their Children

It is recommended that ongoing support groups and counselling services be made available for abused women and their children.

The impact of domestic violence on families cannot be underestimated. Abused women have to deal with a myriad of issues, ranging from loss of self-esteem to the need to potentially begin a whole new life. Children who have witnessed ongoing violence are impacted in a significant way and also need support to bring about an understanding of the abusive situation and any changes in their lives that may be occurring. Women's shelters and resource centres in the community are excellent sources for offering such counselling and support groups.

Ongoing support groups for abused women and their children is critical when considering societal barriers that perpetuate gender inequality. Martin and Lloyd (1990) refer to external factors as "bars of a jail" that serve to keep women and children dependent. These factors include economics, education, government, religion, sexuality and gender roles and language. Based upon the inequities and rigid role definitions frequently imposed by these external forces, the authors contend:

All of these bars form the jail that keep women and children trapped in violent homes. It takes tremendous courage for a woman to leave her home when she can't earn enough to support her family, is under religious pressure to forgive her abuser..., and is frustrated by police who will not enforce protective orders. The question is not why women and children stay in abusive situations; the question is why society allows such emotional, physical, and sexual abuse to continue (p.40)*.

Women are often confronted with many important decisions at a time in their lives when they may be least able to make changes. In fact, women with dependent children have additional concerns to contend

* Nina Martin and Jennifer Lloyd, "Violence in the Family". Holistic Education Review, Vol. 3, No. 1, Spring 1990.

with. "The decision to leave, continue, or return to the violent marriage may hinge on the mother's perception of the needs of her children, coupled with her own ambivalence and poor self-esteem." (Elbow, 1982, P.469).*

A sharing of information, discussion of options, and counselling and support for women is very important not only at the time when decisions about any future with her abusive partner must be made, but also during the period after those decisions have been made.

Support groups for abused women can also be implemented in innovative ways, as evidenced by a recent proposal for an employment program with a built-in counselling component for women who have been the victims of abuse and violence. This concept emerged when it was discovered that disclosure of abuse issues was surfacing on a regular basis during the course of an existing employment program. It became apparent to the staff that past abuse had to be dealt with before women were able to gain maximum benefit from the employment course (Women's Employment Counselling Services, April/91)**.

The actual impact of violent episodes upon children as they witness them or are drawn into them include anxiety, fear, conflict and guilt. In addition, "... the violent episode not only reinforces the notion that violence is a means of resolving differences, but children also experience anxiety about self-control issues..." (Elbow, 1982, P. 465). Children who have been exposed to domestic violence in the family need to know that it is not their fault, nor can they control it and most importantly, that the abusive behaviour is not right and is not acceptable. These issues can best be addressed by counselling and support groups for children.

The issues involved in dealing with domestic violence and its aftermath must be acknowledged and promoted through the presence of ongoing counselling and support services for abused women and their children.

* Margaret Elbow, "Children of Violent Marriages: The Forgotten Victims", The Journal of Contemporary Social Work, October 1982.

** Women's Employment Counselling Services of Winnipeg, Inc., "W.I.N.G.S. Women in New Growth Services, A Proposal for Specialized Employment Counselling and Support Services for Abused Women in Winnipeg and Rural Manitoba", April 1991.

RESPONSE TO VICTIMS

3. Victim Impact Statements

It is recommended that a Victim Impact Statement Program be instituted in Manitoba on a permanent basis.

The legislative authority for Victim Impact Statements is found in the Criminal Code of Canada - Section 735 (1.1 - 1.4). In order for a Victim Impact Statement Program to be implemented in Manitoba, the government must designate the establishment and protocols of the Program.

In 1986 the Federal Department of Justice, in conjunction with Provincial Justice Departments, introduced six demonstration Victim Impact Statement projects in Canada. The VIS initiative was launched to encourage victim participation in the criminal justice process and ultimately enhance victim satisfaction with the proceedings.

Winnipeg was one of the demonstration sites and the project operated for three years. Victims of crimes against the person were presented with an opportunity to provide a written account, for use in court, of the impact of the criminal offence upon them. Included in the VIS was information concerning the physical, financial and emotional effects of the offence. The initial project did not include victims of domestic violence.

An evaluation of the project revealed substantial support (81%) among those victims who participated in the program. Also of significance were the findings that there was virtually no element of vengeance on the part of the victim nor did the information collected in the VIS duplicate any existing information. Finally, even without the existence of the current Criminal Code provisions at the time of the demonstration project and hence some problems encountered in having the VIS introduced as evidence in court, victims were satisfied with having had an opportunity to participate in the process whether or not their statements were actually used in court at the time of sentencing.

Victims of domestic violence are frequently concerned about accurate and complete information being available in court. Victim Impact Statements would enable women to have meaningful input into the criminal court process.

C. RESPONSE TO ABUSERS

1. Program Component for Abusers

It is recommended that an educational program for men who abuse their partners be developed and that this program be a component of services offered by Probation Services, Manitoba Justice.

The reality of present demands must be addressed. During the consultations, it was noted time and time again that the current intensive programs available for abusers, with an average maximum of twelve men per group, had long waiting lists. There are a limited number of community-based services, and both these and existing programs provided by Probation Services, cannot even begin to accommodate the volume of service required.

All probation offices that were consulted had lengthy waiting lists for their intensive four to six month offender treatment programs. In centres outside Winnipeg, the number of court-mandated offenders (i.e. men ordered to attend counselling for partner abuse as a condition of probation) on a waiting list ranged from twenty-five in a northern Manitoba probation office to fifteen in a western Manitoba probation office. In Winnipeg, one probation office currently has a waiting list of two hundred court-mandated offenders for its intensive six month program. It should be noted that at any given time there usually is only one such program operating in any probation office with a maximum of one to two programs per year. Probationary periods of up to three years are being advocated by probation officers to enable offenders to attend a treatment group before the probation order expires.

An educational program would involve no more than ten sessions and would enable intervention in many more cases than at present. The curriculum of the educational program should include the historical and social roles of men and women in society and gender equality issues. The specifics of the curriculum will be developed by Probation Services. The possibility of a fee for the program (similar to fees applicable in cases of convictions for impaired driving), should be explored.

For men subject to applicable conditions imposed in a probation order, failure to attend, participate in and complete the educational program would constitute a breach of that order. The program also must be made available to all abusers sentenced to a period of incarceration in both provincial and federal correctional institutions.

The role of community groups and resources is critical in ensuring that ongoing, long-term counselling and support groups are available for men. In addition, men must be encouraged to form their own support groups. Such groups can meet regularly and provide communication and interaction for men who are attempting to deal with their abusive behavior. Additional support groups in the community can be developed by a number of community agencies. Probation Services can continue with intensive long-term counselling programs where appropriate, as well.

The basic philosophy behind programs for abusers must be that men who are abusive toward their partners are not "sick" and in need of treatment *per se*, but are individuals who express their anger in unacceptable ways toward women whom they view as having less power. The acceptance of responsibility for such behavior as well as the responsibility for changing that behavior is emphasized. The Duluth Domestic Abuse Intervention Program (DAIP), noted for its innovation in intervention and prevention, is described as having the following orientation:

"...the project assumes that battering is not an individual pathology or mental illness but rather just one part of a system of abusive and violent behaviors to control the victim for the purposes of the abuser" (Caesar & Hamberger, 1989)*.

In our society, gender biases place men and women in unequal positions in society. These traditional beliefs persist, albeit for some individuals on a subconscious level. An educational component that speaks to the the destructive nature of these restrictive roles for both sexes is viewed as having optimum value and is integral in understanding why abuse occurs and for changing behavior.

* Lynn Caesar & L. Kevin Hamberger, *Treating Men Who Batter*, Springer Series- Focus on Men, Volume 5, 1989.

D. CRIMINAL JUSTICE SYSTEM

1. Charging Directive

It is recommended that the Minister of Justice issue a directive to all police agencies in the province of Manitoba to institute, in all cases of partner abuse, charges under the Criminal Code of Canada and/or any other applicable legislation when there are reasonable and probable grounds to believe that an offence has been committed, regardless of the relationship between the offender and the victim.

As a result of the consultations, it became evident that there was some confusion as to the scope of the charging directive issued in 1983. That directive specifically refers to spousal assault. It was generally agreed that "common law" relationships were included in the definition of "spousal", but there was a difference of opinion on the length of cohabitation necessary to establish a "common law" relationship. The majority were of the opinion that the charging directive did not apply to dating relationships. Other areas of confusion included the types of offences to be considered.

There is a need for clear and consistent terminology and guidelines to be established throughout the province for all those involved in the administration of justice.

E. POLICE RESPONSE

1. Police Education

It is recommended that all policing agencies in Manitoba be required to receive adequate training in the social dynamics of domestic violence and education of the policy directives and protocols for responding to such cases. The training will be provided both for police recruits, as part of their basic training, and for all officers as in-service courses at regular intervals.

At present, most officers receive extensive training in crisis intervention, with a component of that training dealing with the response to cases of domestic violence. In fact, police acknowledge that cases of domestic violence are potentially among the most volatile they face and detailed instruction in safety and protection matters is given to them. The bulk of such training occurs at the recruit level. In addition, some time is devoted to providing an overview of community resources and an introduction to the dynamics of abusive relationships. However, municipal police forces outside Winnipeg and Brandon do not require any specific training to be provided to new members.

After the recruit stage, the R.C.M.P., Winnipeg Police Department and Brandon City Police provide training sessions at intervals. Other municipal police forces are able to attend such sessions on occasion. However, this on-going training does not address domestic violence in a comprehensive manner.

It is imperative that all police officers receive education in the social dynamics of domestic violence, and the reasons for the reluctance of women to involve the police in order for them to appreciate the complexity of the issue. This education should encompass cultural awareness.

A greater sensitivity to the issues will lead to an increase in the ability of the police to appropriately respond to both victims and offenders, ultimately making it easier for women to seek police assistance.

Education in the social dynamics of domestic violence to be presented to police officers must involve planning and presentation from key victim resources, including women's shelters and advocacy groups.

Written material must be developed to complement the training component.

It is further recommended that this training be provided to all Municipal Police, R.C.M.P., Armed Forces and Band and Community Constable Police in the province, and that all police officers, including recruits and veteran officers receive training in the social dynamics of domestic violence by the end of 1992.

POLICE RESPONSE

2. Dispatch Response at Police Departments

It is recommended that a Dispatch Protocol be developed and adhered to by any and all personnel performing the dispatch function at all police departments in the province. It is further recommended that the minimum standards outlined below be incorporated into the Dispatch Protocol.

Procedures for Dispatch Response:

- Promptly receive information from the caller. Name and location of the caller will be ascertained, along with a brief description of the reason for the call. No other demographic information will be of immediate importance at this time (ie. date of birth, length of relationship, etc.).
- Do not suggest alternatives to immediate police action such as a peace bond or obtaining a lawyer.
- If possible, determine the following information:
 - (1) where the parties are located and what they are doing.
 - (2) if any of the parties has a weapon; if so, what kind of weapon.
 - (3) if any of the parties are injured; if so, to what extent.
 - (4) if there are any children in the home.
- Refer to police personnel for immediate action.
- If response will not be delayed, dispatch or police personnel will determine previously reported incidents involving the same parties/residence, and existence of any orders of protection
- Suggest safety measures that might be taken while awaiting police response.
- If the call is not being made during or immediately after the incident (i.e., the following day or later) and the safety of the caller is ascertained, police will be dispatched to respond within a reasonable time frame.
- All calls will be relayed to police for attendance.

The dispatch function is crucial in the police response to domestic violence. It is imperative that all calls for assistance be treated seriously by dispatch personnel, with a recognition that the victim may be in continuing danger.

During the consultations, service providers reported cases where women had indicated there had been no response by police to a call for assistance. Subsequent investigation of some of these cases revealed that dispatch personnel had not communicated the call to police officers. A personal attendance upon the victim is essential to ensure a proper evaluation of the situation and to determine whether or not an offence has been committed.

POLICE RESPONSE

3. Police Protocol

It is recommended that a Police Protocol be developed and adhered to by all police agencies in Manitoba in their response to cases of partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Police Protocol.

A protocol for police officers is necessary to ensure that the tenets of consistency, communication and commitment apply throughout the province in responding to domestic violence.

As part of the protocol:

Partner Abuse will be defined as abuse occurring in any relationship where the individuals are or have been:

- dating
- cohabiting
- married
- separated
- divorced

Applicable offences will include any one or more of the following*:

- Physical Assault (pushing, shoving, hitting, punching, slapping, whether or not any injuries are evident) - Sections 265- 269, Criminal Code of Canada (C.C.C.)
- Sexual Assault - Sections 271-273, C.C.C.
- Uttering Threats -Section 264.1, C.C.C.
- Mischief - Section 430, C.C.C.
- Intimidation - Section 423, C.C.C.
- Forcible Confinement -Section 279, C.C.C.
- Possession of a Weapon -Section 87, C.C.C.
- Obstructing Justice - Section 139, C.C.C.
- A Breach of any Court Order including any type of order of protection or restraining order (recognizances, peace bonds, probation orders & Family Maintenance Act orders)

* See Appendix 3 for copies of the legislation listed.

Procedures for Police Response:

(i) Police Attendances

- All requests for assistance in cases of partner abuse will be responded to and fully investigated.

(ii) Police Entry

- Upon arrival, determine the location of parties.
- Ensure entry into the premises while balancing the safety of all involved and the police response.
- First priority will be to stabilize the situation.
- Immediately locate all parties and ensure the safety of the victim and any children who may be present.
- Determine whether the parties have any weapons and the extent of injuries, if any.
- The parties will be separated so that they are not within normal hearing range of each other but where possible in continuous viewing range of the officer(s).

(iii) Police Investigation - General

- Where an interpreter is required, ensure that a neutral third party is provided.
- Under no circumstances will the presence or absence of injuries or the perceived emotional condition of the woman be the determinative factor in the consideration of the laying of a charge(s).
- Under no circumstances will the presence or absence of alcohol on the part of either of the parties be the determinative factor in the consideration of the laying of a charge(s).

- The victim's statement will be sufficient to constitute reasonable and probable grounds for the laying of a charge(s). Corroboration is not necessary to secure a conviction.
- Advise both parties that it is the duty and responsibility of the police to lay a charge(s) when an offence(s) is alleged to have been committed. Make it clear to both parties that it is not the victim who is laying the charge(s).
- Check CPIC and local police information systems to determine record of alleged offender, any pending charges and existence of any orders of protection.
- Seize any weapons on the premises if warranted.
- Offer to arrange medical attention and/or safe passage to a shelter or other location for the victim if she so wishes. If a Community Advocacy Response Team (CART) is available, (see p.8), they will be notified to provide assistance or attend at the residence after the alleged offender has been removed. If a CART is not available, provide the victim with any needed assistance and advise her of the available domestic abuse resources in her area, including any toll free crisis line.
- Provide the victim with an incident number in all cases. Advise the victim to contact police and/or victim services program to advise of any change of address or telephone number.
- Remove the alleged offender from the residence to have charge(s) laid and to bring him before a Magistrate, Hearing Officer or a Justice for an application for judicial interim release.
- In any case where a charge is not laid, record the reasons for that decision.
- In all cases where a charge(s) is laid, outline the history of the relationship, including any previous incidents of physical abuse or threats, in the police report. Also, record how the victim may be contacted, both directly and through collateral sources. Ensure this information is available to the Crown.
- Offer to arrange medical attention and/or safe passage to a shelter for the victim if she so wishes. If a Community

Advocacy Response Team (CART) is available, they will provide assistance or attend at the residence after the offender has been removed. If a CART Team is not available provide the victim with any needed assistance and available domestic abuse resources in her area.

(iv) Police Investigation - Interviewing of Victim

- The victim will be asked by police if she would like to have a victim advocate or other person present for the police interview.
- While being supportive to the woman and obtaining the pertinent information, remain objective, acknowledging that the woman may be in a state of crisis.
- Inquire not only into the immediate incident, but also into the history of the relationship, including any previous incidents of physical abuse or threats, regardless of whether or not those incidents were reported to the police.
- Determine whether or not the abuser has access to any weapons and whether or not the use of weapons has been threatened in the past or during the immediate incident.
- Under no circumstances will a woman be asked either directly or indirectly if she wants charges laid by the police, if she wants to lay charges, if she is willing to follow through with the charges in any way or if she is willing to testify in court. Notation regarding any of these issues is not to be included on any police documentation.
- The victim will have an opportunity to read any written statement provided by her to verify the information.
- Give the victim information on community resources and/or inform her that a Community Advocacy Response Team will be attending as soon as possible, if available in that region.
- If for emotional or physical reasons the victim is not able to give a detailed statement at the time of the offence, she will be contacted as soon as possible the next day and arrangements will be made to meet with her and a supportive person if she so desires, for the taking of a statement.

- In all cases, advise the victim of the course of action intended to be taken and whenever possible, advise her of the arrest of the accused, release on bail, and any conditions of bail.

Throughout the consultations, it was acknowledged that the police response to cases of domestic violence has improved significantly over the years. Many of the procedures referred to above are being followed by police officers throughout the province. However, no standard or detailed protocol presently exists to assist police in their response to these cases.

All calls for assistance must be responded to personally by the police. Various officers expressed frustration over responding to repeated calls from the same individuals. In one community, police indicated that some calls were responded to only by telephone as the parties were known to the police, and they did not see any need to do anything other than mediate the situation. While the frustration of the police deserves recognition, each call for assistance must be treated as a potentially life-threatening situation. "Crying wolf" should never be presumed to apply in any case of domestic violence.

One area of concern that was expressed repeatedly by service providers and women who had been interviewed by the police was a tendency by some officers to inquire into a victim's desire to have a charge laid and whether or not she would be prepared to testify in court if a charge was laid. Some police personnel indicated that they did ask the victim those types of questions as they were concerned about the likelihood of eventually securing a conviction of the accused. Such lines of questioning, though, defeat the intention of the charging directive which is designed to take the responsibility for the laying of a charge away from the victim.

If a woman is either directly or indirectly made to believe that it was she who laid the charge, at some point in the proceedings, it is not uncommon for her to focus on that perception rather than the fact that she was the victim of an offence. At each stage of criminal proceedings, all those involved in the administration of justice must reinforce to the offender, the victim and the community as a whole, the fact that the community will not tolerate and must prosecute the offence.

Recognition must be given to the fact of the victim having suffered abuse from a trusted individual and regardless of any need for immediate medical attention, she may not be able to fully articulate all

of the circumstances of either the incident at hand or previous incidents of abuse at the time of the initial police response. In certain circumstances, it is more appropriate to take a brief statement from the victim and then return at a later time to obtain a detailed statement. Enabling a victim to have an advocate or other supportive person present when being interviewed by the police, will both ease the trauma of the victim and facilitate the communication of all relevant information.

Traditionally, police officers are trained to respond to and investigate complaints concerning a specific incident. Therefore, it is not surprising to have heard that some officers interview a victim only with respect to the circumstances surrounding her immediate request for assistance. Awareness must be increased to comprehend the unfortunate reality that the majority of women in abusive relationships exercise the option of contacting the police as a "last resort", having been physically abused or threatened by their partners on numerous occasions in the past. In order to fully appreciate the impact of the specific incident upon the victim and the volatility of each situation, it is essential for the police to ascertain the history of any abuse in the relationship, including physical abuse and threats, whether veiled or specific.

In all cases the victim should be provided with an incident number and advised by the police of their intended course of action. Although there is presently no requirement for police to notify any victim of the arrest of an accused, his release on bail and any conditions of bail, and any pending court date, it is imperative that the victim receive all such information as soon as possible. The police are most often the first to be aware of all of these circumstances and to have ready access to the means of contacting the victim. A procedure must be developed whereby victims are advised of this very relevant information. Time is of the essence to ensure the safety of the victim in each and every case.

Note: The above procedures for police response have been developed with the assistance of: New Brunswick Woman Abuse Protocols, Nov./90 - Interdepartmental Committee on Family Violence, New Brunswick Government, documentation received from the R.C.M.P., Winnipeg Police Department, and Brandon City Police, and with commentary and concerns expressed by service providers and women throughout Manitoba.

POLICE RESPONSE

4. Recording of Charges and Convictions

It is recommended that all police agencies in Manitoba record particulars of all charges and convictions on the Canadian Police Information Centre (CPIC) and on their individual information systems, whether they be on a computer or manual file, within 24 hours of receiving such information.

All police personnel must have access to the record of any pending charges against an alleged offender in order to be able to determine the seriousness of any particular incident, including the likelihood of further harm to the victim. The information system common to all police agencies in Manitoba is the Canadian Police Information Centre (CPIC). Even if a particular department or detachment does not have a computerized system at its disposal, ready telephone access is available to determine particulars recorded on CPIC.

In many cases of domestic violence, there is a strong likelihood of recurring offences shortly after any initial offence. It is essential for all police agencies to be able to determine all relevant information with respect to an alleged offender when investigating incidents. During the consultations, it was determined that there was a variation in the time parameters of inputting relevant information on CPIC and individual information centres. The range was between one and ten days. In addition, some police agencies indicated that information on charged persons was not automatically communicated to CPIC, even if such charges involved violence. Another concern was that charges or convictions for breaches of orders of protection under The Family Maintenance Act are not recorded on CPIC. While that data might appear on local police information centres, the mobility of individuals throughout the province must be taken into account.

Under the present circumstances, essential particulars are often not available to not only the police, but the Crown and the Court. These particulars are also crucial in a determination of any application for a firearms acquisition certificate.

POLICE RESPONSE

5. Media Disclosure

It is recommended that all police agencies in Manitoba establish a written policy acknowledging and prioritizing the victim's right to privacy and security in any release of information to the media.

In some recent cases, police have released particulars to the media which would enable a victim's whereabouts to be ascertained. In one such case, the victim specifically had requested that the police not disclose any information to the media. It is of utmost importance that the safety of the victim be the paramount consideration.

POLICE RESPONSE

6. Police Assistance for Safe Passage

It is recommended that all police agencies in Manitoba implement a policy requiring responses to requests for assistance to prevent a breach of the peace and that all efforts be made to ensure the safety of all parties during such responses.

A number of women who are in abusive relationships leave their home in anticipation of the possibility of violence occurring. Other women seek shelter after having been assaulted or threatened. In both cases, a woman may have to return to her residence to retrieve personal belongings either for herself or her children, and be fearful that her partner will cause harm to her.

The police have a duty not only to respond to the commission of criminal offences, but also to prevent breaches of the peace. Women who contact the police requesting assistance for the purpose of ensuring their safety when retrieving personal property should receive such assistance as soon as is practicable. When police are in attendance to prevent a breach of the peace and receive a call to respond to an emergency, under no circumstances should the police leave the scene without ensuring the continuing safety of the woman.

POLICE RESPONSE

7. Outstanding Warrants (Victims)

It is recommended that the police give priority to responding to the abuse committed against a woman and that any unrelated outstanding warrants for her arrest that come to their attention as the result of their intervention be dealt with at a later time.

Various service providers indicated that on occasion, the police have become involved in responding to a situation of domestic violence, and have determined the existence of an outstanding warrant for the arrest of the woman. Some women, who have been assaulted immediately before police arrival, have been taken to the police station for detention rather than to a shelter or other place of safety. Other women who have requested safe passage from the police, (e.g. an escort to their residence to retrieve personal belongings), have been detained by the police. In all of the cases cited, the warrants were as a result of unpaid fines for either traffic or minor property offences.

It is paramount that an abused woman not be put into a situation where she becomes doubly victimized by requesting police assistance. In all but the most serious (and rarest) of cases where public safety calls for the detention of the woman on the unrelated matter, the emphasis must be to respond to the abuse. Any outstanding warrant should be addressed at a later stage, and certainly not while the woman is in a crisis situation.

It is recommended that police exercise discretion in the timing of the execution of any outstanding warrants for unrelated matters. Liaison between the police and any women's shelter or advocacy group is particularly important and will enable a process to be set in place so that the woman is not placed in a situation where minor infractions take precedence over the abuse.

POLICE RESPONSE

8. Role of the Manitoba Police Commission

(a) It is recommended that the Manitoba Police Commission develop regulations containing standards for the recruitment and training of all municipal police officers, special constables and other law enforcement officers in Manitoba, and that these regulations promote on-going training for all officers at regular intervals in the social dynamics and protocols for the response to cases of domestic violence. It is further recommended that these regulations be adopted by the government of Manitoba.

(b) It is recommended that the Manitoba Police Commission develop regulations containing standards and protocols for police response to partner abuse in Manitoba, and that these standards and protocols emphasize the importance of instituting charges under the Criminal Code of Canada and/or any other applicable legislation when there are reasonable and probable grounds to believe that an offence has been committed, regardless of the relationship between the offender and the victim. It is further recommended that these regulations be adopted by the government of Manitoba.

(c) It is recommended that The Provincial Police Act be amended to grant specific authority to the Manitoba Police Commission to monitor and audit police agencies under its jurisdiction to ensure compliance with policies, protocol, and standards contained in regulations under The Provincial Police Act. It is further recommended that The Provincial Police Act be amended to include penalty provisions for non-compliance with its provisions and regulations.

The Manitoba Police Commission was created pursuant to the provisions of The Provincial Police Act, and has jurisdiction over the Winnipeg Police Department, Brandon City Police, 13 other municipal police forces, special constables and other law enforcement personnel in Manitoba. The Commission is an independent researching, standardizing and coordinating body, which works to promote the prevention of crime, efficiency of police services and police-community relationships in the province. The Commission has the mandate to make recommendations to the Minister of Justice in a wide range of areas. Regulations requiring mandatory training and establishing protocols and procedures may be enacted under The Provincial Police

Act. Currently, though, the Manitoba Police Commission does not have the authority to enforce compliance with the Act.

The Commission has the ability to play a key role in developing and enforcing standard and consistent police responses in cases of domestic violence. At present, the Manitoba Police Commission is in the process of developing minimum recruitment standards for municipalities. During the consultation process, the Commission emphasized the need for consistency throughout the province and expressed a sincere commitment to undertake action to improve awareness of and responses to domestic violence. It is crucial that key individuals and organizations be consulted in the development of regulations.

In order to ensure compliance with established protocols and procedures, it is essential that the Manitoba Police Commission be granted the authority to monitor policing agencies under its jurisdiction and to impose penalties for non-compliance.

F. CROWN RESPONSE

1. Crown Attorney Education

It is recommended that all Crown Attorneys in the province be required to receive adequate training in the social dynamics of domestic violence and education of the policy directives and protocols for the prosecution of such cases. The training will be provided both for new staff as part of their orientation and as in-service sessions for all Crown Attorneys at regular intervals.

It is imperative that all Crown Attorneys receive education and awareness of the social dynamics of domestic violence and the reasons for the reluctance of women to become involved in the court process in order for them to appreciate the complexity of the issues. This education should encompass cultural awareness. A greater sensitivity to the issues will lead to an increase in the ability of the Crown to respond appropriately to both victims and offenders, and facilitate the involvement of victims in the court process.

Presently, Crown Attorneys in the Family Violence Court operating in Winnipeg have a specialized knowledge of the issues pertaining to domestic violence, and a number of other Crown Attorneys are well versed in the issues. However, each Crown Attorney in the province may become involved in the prosecution of cases of domestic violence, both at the provincial and superior court levels.

Education in the social dynamics of domestic violence to be presented to Crown Attorneys must involve planning and presentation from key victim resources, including women's shelter and advocacy groups. Crown Attorneys who specialize in prosecuting domestic violence cases should also participate in the planning and presentation. Written material must be developed to complement the training component.

It is further recommended that this training be provided to all Crown Attorneys by the end of 1992.

CROWN RESPONSE

2. Prosecution of Offences

It is recommended that the Crown institute a policy of prosecuting all offences arising as a result of partner abuse, including those cases where a victim's testimony is not available when other evidence of the offence exists.

Currently, the Crown has issued a policy directive confirming that criminal proceedings will be instituted in all cases where a spouse has been assaulted. This directive states that "Spousal assault...is defined as physical or sexual assault of a spouse by a person with whom they have, or have had an intimate relationship, whether or not they are legally married or living together at the time of the assault or threat". This directive should be expanded to include the prosecution of all possible offences and clarified to ensure its application to all relationships where the individuals are or have been dating, cohabiting, married, separated or divorced.

In some cases, the testimony of a victim may not be available. However, simply entering a stay of proceedings in all such instances must not be the first consideration. Due regard must be given to all of the circumstances of each case in any determination of the viability of proceeding with the prosecution. For example, evidence in the form of admissions by the accused, eye witness testimony, and medical records may be available and result in the accused being convicted of the offence(s).

(See also Crown Response to Breaches of Orders of Protection - p. 72)

CROWN RESPONSE

3. Protocol and Procedures

It is recommended that a Crown Protocol be developed and adhered to by all Crown Attorneys in Manitoba in response to cases of partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Crown Protocol.

A Protocol is necessary to ensure that the tenets of consistency, communication and commitment apply throughout the province in responding to domestic violence.

Procedures for Crown Response:

- Ensure that all of the relevant information is available at the inception of the case, including the record of the accused (both from CPIC and local police information centres), whether or not any orders of protection are in existence, particulars of the alleged offence(s), and an outline of the history of any previous abuse.
- In any application for judicial interim release:
 - request an order of protection for the victim.
 - in offences involving violence against the victim, request a condition that the accused be prohibited from possessing any firearms, ammunition, or explosive substance.
 - if the accused is already on a form of judicial interim release for an offence involving partner abuse, invoke the reverse onus provisions of the C.C.C., if applicable. In all such cases, due consideration must be given not only to opposing the request for judicial interim release, but also an application to revoke the original bail order.
- In any case where a repeat or dangerous offender, including a person charged with breaching an order of protection, is granted judicial interim release, consideration must be given to an application for a bail review.

- Maintain liaison with available advocacy or victim services programs. Advise of any bail review applications, whether initiated by Crown or defence.
- Any victims who request deletion of an order of protection from an Undertaking or Recognizance or that a charge(s) be "dropped" will be referred to available advocacy or victim services programs. If such programs are not available, a personal interview with the victim will be conducted by the Crown Attorney.
- In all contacts with the victim, confirm the responsibilities of the police to lay charges and the Crown to prosecute charges.
- In any consideration of accepting a guilty plea to a lesser charge and/or prior to any sentencing, contact with the victim will be established either through available advocacy or victim services programs or directly. If contact with the victim is not established, record the attempts made.
- Interview the victim prior to any preliminary hearing or trial in all possible cases. (If a victim has had the support of an advocacy or other service, an introduction prior to the hearing still is essential. In communities where the Crown Attorney travels on circuit, a procedure must be developed which would allow the Crown Attorney sufficient opportunity to review matters with the victim and other witnesses.)
- In any case where an offender is convicted of breach of probation, investigate the viability of an application for the review of the sentence imposed for the original offence.
- In cases where a victim refuses to testify, after all supportive measures have been taken, only in exceptional circumstances should any consideration be given to contempt proceedings, and in all cases consultation with senior Crown Attorneys and the appropriate Director of Prosecutions must occur. In such cases, it is preferable to institute a stay of proceedings rather than having the charge(s) dismissed, due to the possibility of then being able

to re-institute proceedings should there be a change in circumstances.

- Request the imposition of sentences reflecting the necessity of both specific and general deterrence, with particular regard to repeat and dangerous offenders.
- In cases where inappropriate sentences are imposed, consideration must be given to an appeal.
- In all cases where an offender is sentenced to a period of probation or incarceration, ensure that Probation Services or the correctional institute is provided with particulars of the offence, the record of the offender, copies of any pre-sentence report or victim impact statement, and the name, address and telephone number of the victim.

It is imperative that the Crown have as much information as possible for the appropriate conduct of the case. Currently, due to gaps in communication or administrative delays, the Crown may not have information on the existence of any pending charges and orders of protection. Those details are vital, particularly at the outset of the proceedings. When Crown Attorneys do not feel they have sufficient information in any case, they should contact the investigating officers.

With respect to any application for judicial interim release, the probability of further harm to the victim must be assessed. The Crown must treat cases involving repeat or dangerous offenders particularly seriously, and invoke all available options under the Criminal Code of Canada. One of the most significant concerns expressed throughout the consultations was the repeated release of offenders from custody shortly after any arrest. (This issue is further addressed under Crown Response to Breaches of Orders of Protections - p. 72)

Serious treatment of offenders charged with breaches of probation also must be pursued. Such breaches would include violation of orders of protection and failure to participate in treatment and educational programs. In certain cases, the Crown must consider the provisions of the C.C.C. dealing with the revocation of orders imposed on the granting of a suspended sentence, and the then imposition of any

sentence that could have been imposed for the original offence. This type of application has been made in only rare circumstances in the past, but is a further option available to the Crown in the deterrence of offenders.

The consultations further revealed that many women felt they did not receive enough information throughout the proceedings. Crown Attorneys certainly have the conduct of the prosecution of each case, but contact with the victim at relevant stages can serve a number of purposes. Not only does such contact facilitate the involvement of the victim in the proceedings, but also pertinent information may be gathered from her, such as the status of the relationship and any re-involvement by the offender.

Crown Attorneys do carry heavy caseloads and are under significant time constraints. Therefore, liaison with woman's advocacy or victim service programs is crucial. However, where such programs do not exist, it is important for Crown Attorneys to have some type of direct contact with the victim. This contact is particularly relevant when victims must testify at preliminary hearings or trials. Many service providers and women indicated that some of the trauma of having to testify in court can be alleviated by an understanding of the court process.

Crown Attorneys who travel on circuit are placed in difficult situations. They often do not have sufficient, or any time to meet with victims and witnesses. This can lead to problems in the prosecution of cases. Means of enabling a better opportunity to communicate with victims must be explored.

With respect to women who refuse to testify even after all supportive measures have been taken, the Crown has established a policy of not instituting contempt proceedings "unless special or unusual circumstances exist," with the further proviso of referral through the Senior Crown Attorney to the appropriate Director of Prosecutions prior to any decision being made. During the consultations, the necessity of taking every possible step to avoid any further victimization of women who have been abused was a common theme.

In meetings with probation and corrections personnel, it was determined that there was no standard in the information that was received subsequent to the sentencing of offenders. At times, only a copy of the probation order or warrant of committal was received.

Presently, it is not possible to ascertain even the relationship between the offender and the victim from those documents alone. It is essential that relevant details be provided to probation and corrections personnel in order for them to be able to address safety and program issues. The Crown is the most likely to have access to all of the relevant information and is in a position to establish a procedure to ensure that it is delivered to probation and corrections personnel.

G. LEGAL AND PARALEGAL ASSISTANCE FOR VICTIMS

1. Legal Advocacy Office for Women in Abusive Relationships

It is recommended that a legal advocacy office be established for women in abusive relationships. This office will include a toll-free telephone line.

It is necessary that adequate and complete legal information be available for women who are in abusive relationships. Many decisions must be made by the woman and very often either options and ramifications are not presented in a comprehensive manner, or the woman may not have been able to understand the information provided as a result of a recent crisis. Up until now, no one agency has been able to offer a comprehensive legal advocacy service.

Women who are or have been in abusive relationships must have access to legal information on both the criminal and civil court process. Very often, both systems will be involved. However, the legal advocacy office would not provide a service similar to the Women's Advocacy Program. It would provide general information on the criminal justice system and issues pertaining to separation and divorce proceedings, including custody, access and support payments. Options in obtaining orders of protection also would be provided.

Apart from the creation of a legal advocacy office, there is the additional need for informational publications/ brochures dealing with partner abuse and victim service programs to be made readily available to both the general public and agencies working in the area of domestic violence. The publications should be available in English, French, Cree and Saulteaux to reach as wide an audience as possible within the province.

LEGAL AND PARALEGAL ASSISTANCE FOR VICTIMS

2. Victim Services in Criminal Justice System

It is recommended that victim service programs in Manitoba establish a procedure, in liaison with the police and the Crown, whereby victim services will assist in notifying victims of any pertinent facts relating to charges of partner abuse as they proceed through the criminal justice system from police involvement to court disposition.

There is currently a Victim/Witness Assistance Program for all victims in Manitoba operating out of the Law Courts Building in Winnipeg. The Women's Advocacy Program provides specialized services in cases of partner abuse in Winnipeg. In addition, some victim service programs recently have been established in a limited number of other communities.

There are a number of other victim service programs scheduled to begin operation in various centres of the province. These programs are a valuable resource for victims in terms of providing court support, information and assistance in attending court, if necessary. Particular regard should be given to women who require child care or transportation.

An established liaison with the police and Crown in all of the victim service offices in Manitoba will allow for the provision of relevant information to the victim, including the arrest of an accused, the charge(s) laid, any release on bail and applicable conditions, the status of the charge(s) in the system and the disposition of the charge(s) where a guilty plea is involved.

It is imperative that the victims in abusive situations be notified of any orders of protection imposed as a condition of judicial interim release or probation as soon as possible. During the consultations, it became apparent that many victims often were unaware of such conditions. Orders of protection cannot be enforced if their existence is not even known to the victim.

Victim service offices can work in conjunction with the police and the Crown to ensure that victims are made aware of all relevant information as early as possible.

LEGAL AND PARALEGAL ASSISTANCE FOR VICTIMS

3. Paralegal Assistance

It is recommended that Legal Aid Manitoba enhance its paralegal component to assist women who have been the victims of abuse in obtaining information with respect to their legal rights and options, and to facilitate the legal representation of women.

Paralegals can provide invaluable assistance for women in abusive relationships by communicating legal information and facilitating the obtaining of legal counsel, where necessary. Legal Aid Manitoba currently provides paralegal assistance in a number of areas in the province.

Women must be aware of their legal options before they are able to make any informed decision about their future. There is a particular concern for women in isolated communities. Paralegals could travel to those communities either at circuit court intervals or other times to ensure access to information.

4. Women's Advocacy Program

(a) It is recommended that the Women's Advocacy Program operating in Winnipeg be located with the existing Victims Programs in the Manitoba Department of Justice.

(b) It is recommended that the current resource needs of the Women's Advocacy Program be examined.

The Women's Advocacy Program provides an essential service to women whose partners have been or could be charged with offences as a result of domestic violence. The four main areas of service offered to women include the following:

- (1) Legal information and court support,
- (2) General support, information on the dynamics of abusive relationships, short-term counselling, and safety planning,
- (3) Liaison with the criminal justice system,
- (4) Training and educational services.

The recommended location of the Program is based on discussions with Women's Advocacy Program staff and criminal justice and social service personnel who work with the Program. The liaison of the Women's Advocacy Program has been and continues to be most closely aligned to Manitoba Justice in providing valuable assistance to victims with respect to the criminal justice system process.

The transfer of the Program from Family Services to Manitoba Justice will not affect the orientation of the Program. It will remain focused on and operate in response to the needs of victims. In fact this focus will be further consolidated by becoming a member of the Victims Programs in the department.

It is necessary, though, that consultation regarding the particular counselling needs of clients continue to be available to Women's Advocacy Program staff from qualified Family Services staff.

The present resources in the Women's Advocacy Program must be examined to ensure that both the professional and administrative staffing components can meet the demand for services. For example, consultation with Program staff revealed that the administrative workload was cumbersome and interfered at times with actual program services. A number of lawyers expressed concerns about the delay in time before a woman was able to meet with program staff.

H. COURT RESPONSE

1. Judicial Education

It is recommended that all Judges, Magistrates and Hearing Officers in Manitoba receive adequate training in the social dynamics of domestic violence. The training will be provided for both new appointees as part of their basic orientation and as in-service courses for incumbents at regular intervals.

The impact of domestic violence is most evident in the criminal justice system. However, many other areas of the law must deal with issues arising as a result of domestic violence. These include separation and divorce proceedings, and child protection matters.

Education and awareness of the social dynamics of domestic violence will assist all Judges, Magistrates and Hearing Officers in the determination of a number of issues. This education should encompass cultural awareness.

Education in the social dynamics of domestic violence to be presented to Judges and other court officials must involve planning and presentation from key victims resources, including women's shelters and advocacy groups. Judges who specialize in hearing cases involving domestic violence should also participate in the planning and presentation. Written material must be developed to compliment the training components.

It is recommended that all Judges, Magistrates and Hearing Officers be able to receive training in the social dynamics of domestic violence by the end of 1992.

COURT RESPONSE

2. In-Camera Proceedings

It is recommended that due consideration be given by the Court to excluding all or any members of the public from the proceedings in serious or sensitive cases of partner abuse.

Section 486(1) of the Criminal Code of Canada states that any proceedings against an accused person shall be held in open court, but does grant to a Judge the discretion to order that all or any members of the public be excluded from the proceedings under certain circumstances. These include the necessity to maintain order and to enable the proper administration of justice.

Throughout the consultations, victims and service providers stressed the trauma incurred by having to testify in court. Often, sensitive details of the relationship between the victim and offender must be disclosed. As well, the victim must face not only her abuser and possibly members of his family, but also a significant portion of the general public in a number of communities. In isolated areas, including many Aboriginal communities, this problem is a particular concern.

It was related to the Review that many women who indicated they did not wish a charge(s) to proceed, did so as a result of the necessity of having to testify in open court. In serious and sensitive cases of partner abuse, an exclusion of some or all of the members of the public should be given due consideration.

COURT RESPONSE

3. Disposing of Domestic Assault Cases in Reasonable Time Frame

It is recommended that all efforts be taken to expedite the prosecution of partner abuse throughout the province.

The length of time from the laying of a charge(s) to the final disposition of a case has a significant impact on the victim. Many women who have been in abusive relationships feel that their lives are in limbo until such time as criminal proceedings have been concluded. In addition, there may be ongoing pressures placed upon a woman by not only her abusive partner, but also family and community members.

Of further significance is the fact that the longer it takes for a case to be concluded, there is less and less likelihood that an abuser will admit and accept responsibility for his actions. In fact, one of greatest reasons for the delays in proceedings is the necessity of having to schedule preliminary hearings and trial dates when pleas of not guilty are entered.

The Family Violence Court which commenced in Winnipeg's Provincial Judges Court in September 1990, has, as one of its main focuses, the expeditious processing of cases of domestic violence cases. A three month period has been chosen as the optimum time-frame for concluding a case to alleviate the stresses on the victim and to reduce the minimization of offences by the abuser.

Courts in centres outside Winnipeg have a range of frequency of court sittings. In some isolated areas, there is a month or more between circuit court sittings. Every effort should be made to grant limited remands in cases of partner abuse. A month or more between court dates should allow sufficient opportunity for the accused to obtain legal counsel, for the defence to obtain particulars and for any necessary reports to be prepared.

It is recommended that in areas where the court sits on a regular basis, a policy of concluding cases of partner abuse in a three month period be established, and that this time frame be six months in remote areas.

COURT RESPONSE

4. Family Violence Court

(a) It is recommended that the Family Violence Court Implementation Committee, in consultation with family violence service and resource groups, develop a plan for expanding components of the Family Violence Court to centres outside of Winnipeg, where feasible.

(b) It is recommended that the Minister of Justice discuss with The Court of Queen's Bench the development of the Family Violence Court concept at that level.

The Family Violence Court was established in September 1990 in Winnipeg's Provincial Judges Court. The new court is the first of its kind in Canada to offer an integrated court response to cases of partner, child and elder abuse. Judges presiding in the Court and Crown Attorneys who prosecute the offences have expertise in responding to cases of abuse, and facilitate sensitive responses for victims. As a result of the establishment of the Family Violence Court, the proposed time frame for concluding cases, from the first appearance to final disposition, has been reduced from six months to three months.

The Manitoba Government Family Violence Court Implementation Committee was established to create, oversee and monitor the Family Violence Court in conjunction with feedback from community and government groups working in the area. In addition, a federally funded, one year court monitoring study is underway to assess the impact of the new court on the prosecution and disposition of cases of domestic violence. The final results of the study are expected in the fall of 1991.

The Family Violence Court Implementation Committee can utilize ongoing information from court personnel, community and government service providers, and from the final report of the court monitoring study to facilitate the incorporation of components of the Family Violence Court to other centres in the province, where feasible. In addition, further information on responses to domestic violence will be obtained from a provincial spouse abuse tracking study being funded by the Manitoba and Federal Governments. That study will provide

pertinent details on the processing of cases in the criminal justice system in the province.

At present, the Court of Queen's Bench does not have a similar specialized court and is hearing a number of family violence cases at that level. Discussions regarding an implementation plan that would enable the family violence court concept to be introduced in the Court of Queen's Bench would facilitate the establishment of a comprehensive response to family violence.

COURT RESPONSE

5. Orders of Probation

It is recommended that when a period of probation is imposed in cases of partner abuse, the offender be subject to the supervision of a probation officer and that, in addition to any orders of protection, the court give due consideration to conditions that the offender be prohibited from possessing any firearms, ammunition or explosive substances; that the offender attend, participate in and complete domestic violence programming as directed by Probation Services; and that the offender make restitution or reparation to the victim for actual loss or damage caused as a result of the offence. It is further recommended that the period of probation be a minimum of two years.

In cases of partner abuse, unsupervised periods of probation do not permit maximum intervention with the offender and enforcement of the order. Conditions imposed by the Court must address protection of the victim and accountability for the offender.

After a consideration of conditions prohibiting the offender from contacting the victim in any way and from attending at her residence and place of employment, the next consideration must be a condition that the offender not possess any firearms, ammunition or explosive substances. In fact, section 737(2) of the Criminal Code of Canada specifically states that the court may prescribe a condition that the offender "abstain from owning, possessing or carrying a weapon" in any probation order.

That section of the C.C.C. further indicates that the Court may impose a condition that the offender "make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof". Presently, the Court rarely considers ordering restitution in cases of partner abuse. This option must be utilized as an additional component in emphasizing to offenders that they will be held accountable for their actions.

In order to reduce the likelihood of reinvolved, all offenders subject to a period of probation should be required to "attend, participate in and complete domestic violence programming as directed by Probation Services." The specific wording of this condition was suggested by a

number of probation officers. It provides an effective means of ensuring the participation of individual offenders in the actual programming. In addition, the specific wording ensures a better likelihood of having the offender convicted of any charge of breach of probation that may be laid as a result of non-compliance.

Due to existing waiting lists for services provided to offenders, a two year probation period should be a standard. Otherwise, an offender may still be on a waiting list before being able to participate in available programming when the period of probation expires. No consequences could then be imposed on the offender for failure to attend any program. A lengthier period of probation also permits ongoing monitoring of each situation.

COURT RESPONSE

6. Preliminary Hearings

It is recommended that an examination of the necessity of preliminary hearings be conducted, and that other alternatives be explored.

The impact on a victim who is required to testify at both a preliminary hearing and trial cannot be overstated. This concern was raised consistently throughout the consultations. The existing procedure also serves to further delay the ultimate conclusion of cases.

Historically, preliminary hearings served the purpose of being able to provide full disclosure to the accused of the allegations against him. *Vive voce* evidence was the easiest means of providing that information. The technology of today permits the reproduction of all pertinent evidence in a timely manner.

The current reality is that preliminary hearings serve little, if any, of their original purpose. Victims are cross-examined by counsel for the accused, with the main objective of attacking their credibility. It is not the laying of charges in and of itself that causes backlogs in the criminal justice system. The availability for the accused to elect two separate hearings is a significant contributing factor.

There is no doubt that the accused is entitled to full disclosure of all of the allegations against him, but this right can be met in many ways other than requiring the testimony of the victim. Very often women feel that it is they who are on trial rather than the accused.

The provisions of the Criminal Code of Canada should be amended to exclude the conduct of preliminary hearings in all but the most serious and exceptional cases. Other alternatives are to amend the C.C.C. to make the majority of crimes of violence indictable offences within the absolute jurisdiction of a provincial court judge, or to make them hybrid offences with an increase in the penalty provisions for summary conviction offences.

I. CORRECTIONS/PROBATION RESPONSE

1. Corrections/Probation Education

It is recommended that all Manitoba correctional and probation personnel be required to receive adequate training in the social dynamics of domestic violence. The training will be provided both for new staff as part of their orientation and for existing staff as in-service courses at regular intervals.

Education and awareness of the social dynamics of domestic violence for correctional and probation personnel is critical in terms of understanding the complexity of the issues including ongoing safety concerns for the victim and appropriate programming for the offender.

A number of educational and training sessions for staff has been initiated by Probation Services to date. However, all personnel must participate in these sessions to enable them to better assess the needs in each particular case.

Education in the social dynamics of domestic violence to be presented to corrections and probation personnel must involve planning and presentation from key victim resources, including women's shelter and advocacy programs. This education should encompass cultural awareness. Corrections and probation personnel with expertise working in domestic violence must also participate in the planning and presentation. Written material must be developed to complement the training component.

It is recommended that all corrections and probation personnel, including new and existing staff, receive training in the social dynamics of domestic violence by the end of 1992.

CORRECTIONS/PROBATION RESPONSE

2. Corrections Protocol

It is recommended that a Corrections Protocol be developed and adhered to by all provincial and federal correctional institutions in Manitoba in the response to cases of partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Corrections Protocol.

A Corrections Protocol is necessary to ensure that the tenets of consistency, communication, and commitment apply throughout the province in responding to domestic assault.

Procedure for Corrections Response:

- **Ensure that all relevant information is available within one week of the incarceration of the offender. This will include the record of the offender (both from CPIC and local police information centres), whether or not any orders of protection are in existence, particulars of the offence(s), copies of any pre-sentence report or victim impact statement, and the name, address and telephone of the victim.**
- **Establish initial contact with the victim. If any order of protection is in existence, advise victim of means of reporting breaches. If no contact with victim occurs, record the attempts made.**
- **Contact the victim whenever an inmate is released on a day pass or temporary absence, and whenever an inmate is unlawfully at large or escapes custody.**
- **Encourage the offender to participate in any educational or other programs in the institution pertaining to partner abuse, and inform him that participation in relevant programs will be one of the considerations in any applications for release from the institution.**

Presently, correction personnel are often unaware of the relationship, if any, between offenders and victims due to receiving limited information. In some instances, only the Warrant of Committal is

received when the offender is incarcerated. Obtaining all relevant particulars, including the nature of the offence and the record of the offender, is crucial in the determination of a number of factors, such as whether or not an offender is entitled to day passes or temporary absences.

Current procedures contain no strict requirements for corrections personnel to contact the victim at any point in the detention or release of the offender. Safety concerns demand that victims be made aware of any pending release of the offender and any applicable conditions.

CORRECTIONS/PROBATION RESPONSE

3. Institutional Programming for Offenders

It is recommended that all correctional institutions in Manitoba offer educational programming to all offenders convicted of partner abuse, in addition to any other available programming.

Some correctional institutions in Manitoba have developed anger management and other relevant programs for offenders. It is important that specific programming relating to the issue of partner abuse be developed (see Program Component for Abusers - p. 13)

An educational program would enable access to as many offenders as possible, even those serving short periods of incarceration. More intensive services could be developed for offenders incarcerated for longer periods of time.

CORRECTIONS/PROBATION RESPONSE

4. Probation Protocol

It is recommended that a Probation Protocol be developed and adhered to by all probation personnel in Manitoba, in their response to partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Probation Protocol.

A Probation Protocol is needed to ensure that the tenets of consistency, communication and commitment apply throughout the province in responding to domestic assault.

Procedures for Probation Response:

- Ensure that all relevant information is available, including the record of the offender (both from CPIC and local police information centres), whether or not any orders of protection are in existence, particulars of the offence(s), copy of any victim impact statement, and the name, address and telephone number of the victim.

(a) Pre-sentence phase:

- When preparing a pre-sentence report, the victim will be contacted for input into the process. This contact may be made indirectly if a Victim Impact Statement Program and/or victim service program is available. If contact with the victim does not occur, record the attempts made.
- The victim will be questioned about the particulars of the offence(s), history of the relationship, and any specific concerns she may have.
- Advise the victim of available resources and the court date for sentencing of the offender.
- In the pre-sentence report, recommend the suitability of the offender attending programming for domestic violence, and the type and availability of such programming in the area.

(b) Post-sentence phase:

- If a condition of no contact with the victim or other order of protection is included in the probation order, reinforce with the offender the consequences of any breaches.
- Establish contact with the victim. Ensure she is aware of the relevant conditions of probation. If the victim does not have a copy of the probation order, provide one to her.
- Advise the victim that she may contact the probation officer if she has any concerns regarding the conduct of the offender. In particular, inform the victim of means of reporting breaches.
- Discuss with the victim available resources for her and programming for the offender.
- Report any potentially dangerous situations to the police, including those where the offender possesses or has access to weapons.
- If the offender breaches a condition to attend, participate in and complete domestic violence programming, or other condition of probation, submit a report to the Crown for action.

Currently, there is no established protocol for probation officers to contact victims. This contact is particularly important in cases of partner abuse, due to the potential of reinvolved in further offences.

In isolated areas, there may be difficulties encountered in contacting the victim, however every effort should be made to ensure the victim is aware of pertinent information. The police or other community resources could assist the probation officer in relaying details to the victim.

During the consultations, probation officers serving remote areas expressed particular concerns about their ability to be able to adequately monitor offenders. In fact, it was readily acknowledged that there were some cases where no contact was made with the offender throughout the entire probationary period, for varying reasons. The ability of probation officers to monitor and provide services to offenders in isolated areas must be addressed, in consultation with local communities.

CORRECTIONS/PROBATION RESPONSE

5. Domestic Violence Programming

It is recommended that Probation Services offer an educational program to all offenders convicted of partner abuse, to be complemented by intensive programming in appropriate cases. It is further recommended that the educational program be available for offenders in correctional institutions.

The issue of the present demands on services for offenders has been addressed under Program Component for Abusers (p. 13). Current intensive programming offered by Probation Services provides necessary intervention in only a limited number of cases.

Probation Services should use its resources to develop an educational program for offenders convicted of partner abuse. This program would be for a set period of time (no more than ten sessions) and would substantially reduce any waiting list for services. The program would be made available for offenders in correctional institutions. In addition, components of the program could be adopted for use in the community.

CORRECTIONS/PROBATION RESPONSE

6. Breaches of Order of Probation

It is recommended that in all cases where an offender breaches a condition to attend, participate in and complete domestic violence programming as directed by Probation Services, a charge of breach of probation be prosecuted, and appropriate penalties imposed.

Currently, as many as one-half of offenders who commence a group for batterers do not complete the program, often with little consequence. It is imperative that all orders imposed by the Court be treated seriously and that there be appropriate consequences for violations of those orders.

During the consultations, there were concerns about sentences imposed by the court when men were convicted of breaches for failing to attend and/or complete domestic violence programming. In some cases, men have received a fine for such an offence, with no further requirement that they attend appropriate programming. As one individual commented, this can lead to the impression that it is not unacceptable to abuse your partner provided you can pay for it.

J. PAROLE RESPONSE

1. Parole Response

It is recommended that the Correctional Service of Canada and the National Parole Board establish and implement a comprehensive policy pertaining to the acknowledgement and protection of the rights of victims and their families, and access to information by them. It is further recommended that the minimum standards which are outlined below be adopted.

The National Parole Board is responsible for granting, denying, terminating or revoking parole for offenders in both federal and provincial institutions in Manitoba. An inmate may be eligible for day parole after serving one-sixth of his sentence, and for full parole after serving one-third of his sentence. Inmates incarcerated in a federal institution (sentence of two years or more), automatically have their eligibility for parole reviewed, but those inmates incarcerated in a provincial institution must apply to have their eligibility for parole reviewed.

When an offender is sentenced to incarceration in a federal institution, a parole officer is assigned to the case at the outset. This does not occur for offenders incarcerated in a provincial institution, but a parole officer would be assigned upon an inmate's application for a parole board hearing.

At present, there is no established policy for a parole officer to contact a victim or family members at any stage of the inmate's incarceration, although some progress has been made to involve victims and acknowledge their concerns in the past few years.

Currently, if a victim is aware of the parole officer assigned to the case, or is contacted by the parole officer, limited information about the inmate may be released. For example, a victim is not entitled to know where the inmate is incarcerated, except in rare circumstances. In many cases, a victim will be unaware of the offender's release on parole and any conditions that may be attached to that release.

When a victim has been advised of an inmate's parole board hearing date, the victim may submit information to be considered by the National Parole Board in its determination of the inmate's eligibility for parole. Until recently, this information was kept confidential if the Board was of the opinion that revealing the information to the offender could jeopardize the victim's safety. However, as a result of a decision rendered by the Federal Court of Appeal in January, 1991 (The National Parole Board and Gough) any information tendered by the victim or anyone on behalf of the victim cannot be considered by the National Parole Board in any determination of the inmate's eligibility for parole unless details of that information are released to the inmate. The Federal Court of Appeal ruled that if the inmate did not have an opportunity to know and answer allegations against him, there would be a denial of his right to fundamental justice.

In many cases, the victim and/or the family of the victim may still be dealing with the aftermath of the original offence leading to the incarceration of the inmate. The decision of The Federal Court of Appeal, while protecting the rights of the inmate, is an erosion of the victim's right to participate in the parole process without fear of reprisal, and may well prohibit victims from presenting relevant issues and concerns to the National Parole Board.

With respect to the Recommendation at the outset, the following minimum standards are identified:

- All possible steps should be undertaken to ensure that victims or their family members be able to submit their concerns and issues to the National Parole Board in any determination of an inmate's eligibility for parole, without fear of reprisal.
- Contact between the victim and the parole officer must be established upon assignment of the case to the parole officer. If contact with the victim is not made, the parole officer is to record the attempts made and the outcome.
- Access to relevant information concerning the offender, including notice of parole board hearing dates and notice of any release dates, must be made available to the victim or authorized representative of the victim. Only when the victim is informed of the offender's pending release and any relevant conditions that may be attached, will she be in a position to take any necessary

steps to prepare for his release, and be able to act upon violations of any conditions (i.e. that the offender not have any contact or communication with her).

- Any restraining orders attached to an inmate's release must be communicated to the local law enforcement agency, and then recorded on CPIC.
- The victim should be able to view a recent photograph of the offender upon request (currently, photographs of the inmate are taken the day before or day of release), and should be advised of the destination of the offender.
- The victim must also be informed if an offender escapes custody, becomes unlawfully at large, has his parole suspended or revoked, or is to be released under mandatory supervision (after serving two-thirds of the sentence imposed).

PAROLE RESPONSE

2. Pardons

It is recommended that pardons granted under the Criminal Records Act for offences committed under the Criminal Code of Canada not be operative with respect to any application the pardoned person might make for a firearms acquisition certificate and with respect to determinations in the prosecution of any subsequent offences alleged to have been committed by that person under the Criminal Code of Canada.

Pardons may be granted to individuals who have been convicted of offences under the Criminal Code of Canada, including crimes of violence. For indictable offences, the convicted person may apply for a pardon five years after the latest of the termination of any period of incarceration, the period of probation, and the payment of any fine imposed and for summary conviction offences, the applicable waiting period is two years. The waiting period is shorter in any case where an absolute or conditional discharge was granted for either a summary conviction or indictable offence.

For example, a person who was convicted of assault (where the Crown proceeded by way of summary conviction) and received a sentence of one year's probation, may apply for a pardon after two years from the end of the probation period. The person certainly may be entitled to a pardon vacating the conviction for any purpose in the general community. However, the knowledge of a previous conviction, particularly for an offence (s) involving violence, is relevant in the determination of a number of other issues.

Pardons are misleading to the Court and in effect hinder any determination of judicial interim release and the appropriate sentence to be imposed, especially if the subsequent offence is similar to the offence for which the pardon was received. In addition, the type of offence a person may have been convicted of in the past is certainly crucial in any application for a firearms acquisition certificate.

K. ORDERS OF PROTECTION/RESTRAINING ORDERS

Although some of the following issues and options have been addressed elsewhere in this Report, a common denominator throughout the consultations was the concern that victims be able to obtain orders of protection, or restraining orders, as expeditiously as possible, and that once obtained, these orders be consistently enforced by all components of the justice system. Service providers often remarked that many victims were given a false sense of security when an order of protection was granted, as many abusers frequently disobeyed the conditions of these orders, without any apparent repercussions.

A number of individuals, including those directly involved in the administration of justice, expressed the view that breaches of orders of protection were not regarded as serious offences. As the adage states, "Justice must not only be done. Justice must be seen to be done." If offenders and abusers are to take orders of protection as serious conditions that must be obeyed by them, breaches of these orders must be pursued throughout the justice system, and appropriate penalties imposed.

The terms orders of protection and restraining orders include any type of court order, whether imposed by a court of criminal or civil jurisdiction, whereby one individual is prohibited from a certain form of contact or all contact with another individual.

At present, in Manitoba, the usual orders of protection that may be granted in cases of partner abuse are as follows:

- (a) conditions imposed in an Undertaking or Recognizance (Bail Order) that an accused not have any contact or communication with the victim and that he not attend any premises where she may be residing or employed,
- (b) conditions imposed in a Probation Order (after sentence) that an offender not have any contact or communications with the victim and that he not attend any premises where she may be residing or employed,
- (c) conditions imposed in a Recognizance under Section 810 of the Criminal Code of Canada (peace bond) as in (a) and (b) above,

- (d) orders of prohibition and non-molestation pronounced under The Family Maintenance Act of Manitoba. This Act applies to persons who are married or have cohabited. Under Section 10(c) of the Act, a court may make an order "That one spouse shall not enter upon any premises where the other spouse is living separate and apart.", and under Section 10(d), an order "That one spouse shall not molest, annoy or harass the other spouse or any child in the custody of the other spouse."

Enforcement and appropriate penalties for breaches of all orders of protection cannot be over-emphasized. Two murder - suicides occurred in Winnipeg in October 1990, where women were shot to death by men who then committed suicide. In one of those cases, the man had been arrested and charged with assault causing bodily harm and then released on bail with a condition that he not have any contact or communication with the victim eighteen days before the murder. On two separate occasions after that he was arrested and charged with breaches of recognizance, for having contacted the victim. The final time he breached the conditions of his recognizance resulted in tragedy.

ORDERS OF PROTECTION/RESTRAINING ORDERS

1. Powers of Arrest

It is recommended that in all cases of partner abuse when an offence is alleged to have been committed under the Criminal Code of Canada and/or any other applicable legislation that the police exercise their powers of arrest, whether the alleged offence be summary conviction, hybrid, or indictable in nature, in all but the most exceptional cases.

Various police personnel, service providers and victims indicated that there still were a number of cases where an accused person was not arrested and instead was given an appearance notice requiring him to appear in court at a later date. An appearance notice is not subject to any conditions other than the requirement to appear in court to respond to the charge. As a result, in such cases, there is no immediate order of protection available to the victim, such as a condition that the accused not have any contact or communication with her.

Pursuant to Section 495(1) of the Criminal Code of Canada (C.C.C.), a peace officer may arrest without a warrant in certain cases, such as when the peace officer has reasonable and probable grounds to believe that a person has committed or is about to commit an indictable offence, or if the peace officer finds a person committing a criminal offence.

However, Section 495(2) C.C.C. states that a peace officer shall not arrest a person without warrant for, *inter alia*, offences punishable on summary conviction, or offences for which the person may be prosecuted either by indictment or by way of summary conviction, in any case where:

- “(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or

- (iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person..."

Cases in which a peace officer may be concerned about his or her powers of arrest include the offences of assault, breach of recognizance, breach of probation, and breaches under The Family Maintenance Act, when such offences are not witnessed by the peace officer.

In all cases of domestic violence and partner abuse, there is a strong likelihood of a continuation or repetition of the offence, or the commission of another offence, and the public interest demands that all efforts be made to secure the safety of the victim. One of these efforts is the exercise by the police of their powers of arrest. The accused remains entitled to apply for judicial interim release.

In addition, the police should remain mindful that under Section 524(2) C.C.C., a peace officer does have the power to arrest a person without a warrant when he or she believes on reasonable grounds that the person has disobeyed or is about to disobey any conditions of judicial interim release, or has committed an indictable offence while on judicial interim release.

ORDERS OF PROTECTION/RESTRAINING ORDERS

2. Judicial Interim Release (Bail)

It is recommended that in all cases of partner abuse that release of the accused by way of an appearance notice, promise to appear, summons, or undertaking without conditions be exercised in only exceptional circumstances, and that priority be given to ensuring safety for the victim in any application for judicial interim release. Should the accused be granted judicial interim release, conditions that he have no contact or communication with the named victim, and that he not attend any premises where she may be residing or employed, until further order of the Court, are to be considered by the Hearing Officer, Magistrate, Justice or Judge in each and every case.

The judicial interim release of the accused on the conditions outlined above, in addition to any other conditions that might be imposed, ensures an immediate order of protection for the victim. If such conditions are not imposed at the outset, they cannot later be added, except with the consent of the accused, which is unlikely to occur.

In many cases, a victim may decide not to institute proceedings under The Family Maintenance Act seeking orders of protection, or she may not either have the financial resources to so do or be entitled to relief under that legislation. Alternatively, even if other means to obtain orders of protection are instituted by the victim, it is inevitable that delays would be encountered in the present options that are available.

Should the victim later request a variation or deletion of the conditions of bail imposed on the accused, due consideration to that request can be given after the victim has had an opportunity to consult with the prosecutor, Women's Advocacy Program, or other available victim support service.

ORDERS OF PROTECTION/RESTRAINING ORDERS

3. Police Recording of Orders of Protection

It is recommended that all police agencies in Manitoba record particulars of all orders of protection on the Canadian Police Information Centre (CPIC) and on their individual information systems, whether they be on a computer or manual file, within 24 hours of receiving confirmation of the granting of any such order.

Presently, the usual practice followed by police personnel is to record on CPIC and on their individual information systems persons who are charged with or have been convicted of offences under The Criminal Code of Canada. For charged persons, the form of judicial interim release is recorded, and for convicted persons, the type of sentence is recorded. However, any specific conditions, such as orders of protection, are not recorded as a matter of course.

In addition, it is not the current policy of any of the police agencies in Manitoba to record the particulars of peace bonds and orders of protection under The Family Maintenance Act, although CPIC can accommodate the recording of these orders.

In many instances, a victim may not as yet have received a copy of an order of protection, due to administrative delays. It is imperative that the police have the ready ability to determine whether or not any orders of protection are in effect when responding to a call for assistance. This information will enable the police to determine the type of charges to be laid, and will affect the issues of arrest and judicial interim release.

ORDERS OF PROTECTION/RESTRAINING ORDERS

4. Police Response to Breaches of Orders of Protection

It is recommended that all police agencies in Manitoba fully investigate all allegations of breaches of orders of protection, and that the appropriate charge(s) be laid when there are reasonable and probable grounds to believe an offence has occurred.

There are few options available to a woman seeking protection from an abuser. A short term option is seeking refuge in a shelter or safe home. Another option may be to move to a location some distance away from her home and community, with or without her children.

Even in cases where abusers have been charged with assault or other offences, judicial interim release and a sentence other than incarceration are the norm. Therefore, it is of utmost importance that offenders be held accountable for all breaches of orders of protection. The breach of the order in and of itself is an offence, and it is not necessary for other offences to have been committed. A woman's statement of the particulars of the breach should be sufficient to constitute reasonable and probable grounds for the laying of a charge.

During the consultations, various law enforcement personnel, prosecutors and probation officers expressed a concern that the laying of charges in all cases of breaches of orders of protection would "clog" the criminal justice system. This may occur in the short term, but with consistent enforcement of these types of offences, the message to offenders would be undeniable. There must never be a quota on safety.

ORDERS OF PROTECTION/RESTRAINING ORDERS

5. Crown Response to Breaches of Orders of Protection

(a) It is recommended that in all cases where an accused has been charged with breaching an order of protection imposed as a condition of an Undertaking or Recognizance, that the Crown invoke the reverse onus provisions of The Criminal Code of Canada in any application for judicial interim release, and that the Crown give due consideration to opposing such applications.

(b) It is recommended that the Crown prosecute all charges arising from breaches of orders of protection, whether imposed as conditions of any Undertaking, Recognizance, Probation Order, Peace Bond, Order under The Family Maintenance Act, or any other applicable legislation, where there is sufficient evidence to prosecute the charges.

Under Section 515(6) C.C.C., an accused who is charged with an indictable offence that is alleged to have been committed while on bail for another indictable offence, or who is charged with breach of an Undertaking or Recognizance while on bail with respect to another offence, must show cause why his detention in custody is not justified. In determining whether or not such an accused is entitled to a further order of judicial interim release, due regard should be given to whether or not "his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or interfere with the administration of justice." (S. 515(10) C.C.C.)

In all cases where an order of prosecution has been violated by an offender who is on bail, it would appear to be self-evident that there is a strong likelihood of reinvolvement if he is released once more. Every effort must be undertaken to insure against the possibility of further harm to the victim.

During the consultations, some prosecutors indicated that in certain cases they did agree to enter stays of proceedings on charges resulting from breaches of orders of protection in exchange for an accused agreeing to enter a guilty plea for a "substantive" charge. A "substantive" charge was referred to as something other than the

breach in and of itself, i.e. an assault or threat. The reasons given for this type of arrangement were the assurance of a conviction (guilty plea) on at least one offence and expediency in having charges concluded.

However, recognition must be given to the importance of securing convictions for breaches of court orders. Those convictions become particularly relevant should the accused become reinvolved in the future and among other things, would indicate the likelihood of his abiding by conditions the Court might then consider imposing.

Breaches of orders of protection should be treated as particularly serious by the Crown and the Court. Not only do such breaches portend a renewal of risk to the victim, but also indicate that the offender has not been deterred by the Court.

ORDERS OF PROTECTION/RESTRAINING ORDERS

6. Peace Bonds

It is recommended that procedures be established to expedite the process of obtaining a peace bond under the existing provisions of the Criminal Code of Canada and that adjournments of the hearing of any application for a peace bond be granted in only exceptional circumstances. It is further recommended that all Hearing Officers and Magistrates in Manitoba afford all persons the right to apply for a peace bond.

Under section 810 of the Criminal Code of Canada, any person who fears that another person will cause personal injury to him or her, may make an application for what is commonly referred to as a "peace bond". An Information is sworn, and the person from whom harm is feared (the defendant) is then served with a summons to appear before a Justice. If the Justice before whom both parties appear is satisfied that the informant has reasonable grounds for his or her fears, the defendant will be ordered to enter into a recognizance and comply with any conditions that might be imposed for a period of up to one year.

Many women in abusive relationships decide not to contact the police for assistance. In other cases a charge may not have been laid. In either situation, the woman may not wish to institute proceedings under The Family Maintenance Act or may not have the financial resources to retain a lawyer for that purpose. In any event, the provisions of The Family Maintenance Act apply only to those persons who have cohabited or married.

Therefore, at present, the only other option available for a number of women who require an order of protection is to apply for a peace bond. The benefit of this course of action is that there is no financial cost to the woman. Unfortunately, such an application does not ensure any immediate protection for a woman and, in fact, may place her at risk. There is a delay in the hearing of the application, as the defendant must be served with a summons. There may be an adjournment of the hearing date if the defendant has not been served. In some jurisdictions in Manitoba, the hearing may be further delayed if the defendant does not agree to sign a peace bond at the outset, as a "trial" date is set, which may be months away.

Another concern that became evident was that some Magistrates refer a woman to seek legal counsel to institute proceedings under The Family Maintenance Act upon determining that she was married to or cohabited with the person whom she fears. There are no exclusionary provisions, though, in the peace bond sections of the Criminal Code of Canada, and each woman is entitled to pursue that type of relief.

Every possible effort should be made to secure an early hearing date for all peace bond applications, and to effect service of the summons upon the defendant forthwith. In remote communities, the local police detachment could assist in service of the summons, and service of facsimile transmitted copies of the summons should be considered sufficient.

A Magistrate or Hearing Officer has the jurisdiction to hear peace bond applications and there does not appear to be any necessity for a formal hearing in court, which causes unnecessary delays. The provisions of section 810 C.C.C. are directed at the prevention of harm and do not create a criminal offence (although a breach of a peace bond is a criminal offence). An administrative process and protocol to hear and determine peace bond applications expeditiously should be implemented.

ORDERS OF PROTECTION/RESTRAINING ORDERS

7. Legislative Initiatives

(a) It is recommended that The Family Maintenance Act of Manitoba be amended to delete application of the penalty provisions with respect to breaches of orders of prohibition and non-molestation, thus enabling those offences to be prosecuted under the Criminal Code of Canada (s. 127 - Disobeying Order of Court).

(b) It is recommended that the Criminal Code of Canada be amended to make all offences of breaches of court orders, including breaches of any undertakings or recognizances and breaches of probation orders, indictable offences within the absolute jurisdiction of a Provincial Court Judge.

Presently, breaches of orders of prohibition and non-molestation are prosecuted under section 50(1) of The Family Maintenance Act, as summary conviction offences subject to a fine of up to \$500.00, imprisonment of up to 6 months, or both. At present, since these are offences under provincial legislation, they are not recorded on the Central Police Information Centre. In addition, there is a serious concern that these offences are not being taken seriously.

Section 127(1) of the Criminal Code of Canada states that anyone who disobeys a court order is, "unless a punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years". If the penalty provisions of The Family Maintenance Act did not apply to breaches of orders of prohibition and non-molestation, prosecutions under the Criminal Code of Canada could be implemented.

Presently, breaches of undertakings or recognizances are hybrid offences and breaches of probation are summary conviction. It should be recognized that all breaches of court orders are grave violations of the law, particularly breaches of orders of protection.

Making all such offences indictable and within the absolute jurisdiction of a Provincial Court Judge would enhance police powers of arrest, enable the Crown to more strenuously oppose applications for judicial interim release, and permit the Court to impose harsher sentences.

Legislative Initiatives (continued)

(c) It is recommended that the government of Manitoba pursue enactment of provincial legislation enabling any person who has reasonable grounds to fear harm from another person to obtain an order of protection, expeditiously (including without notice when warranted) and without cost to any such person.

In many instances, for varying reasons, criminal proceedings are not instituted. The provisions of The Family Maintenance Act that provide protective relief are not able to be utilized by persons who have not married or cohabited. Even if that relief is available, legal counsel must be retained and delays may occur. The existing procedure for peace bond applications is also rife with delays.

Each individual has the right to life, liberty and security of the person under the Canadian Charter of Rights and Freedoms. No one should have to suffer financial loss to receive protection. The province must explore the development of legislation enabling any person to obtain an order of protection as a basic civil right. For women in abusive situations, regardless of the nature of the relationship, easy access to orders of protection is essential.

An administrative process could be implemented for prompt and informal proceedings. In cases of an urgent nature, an order of protection could be granted without notice, and made returnable before the official who granted the order in seven days or less. Police assistance could be invoked for service of applications and orders granted without notice. Any breach of an order of protection would be prosecuted.

L. ADMINISTRATION OF JUSTICE - GENERAL

The following recommendations are made as a result of both specific and general concerns raised during the consultations. They reflect immediate measures that may be taken and considerations that must be given in all cases where domestic violence has occurred.

1. It is recommended that all components of the criminal justice system reinforce to offenders at each stage of the proceedings that it is the responsibility of the criminal justice system to prosecute all offences involving partner abuse. This will include at the time of arrest, applications for judicial interim release, preliminary hearings, trials, and sentencing.
2. It is recommended that any and all offences of partner abuse be identified as such, by a common denotation, on the Canadian Police Information Centre, all local police information systems, and all copies of all Informations, Indictments, Undertakings, Recognizances, Probation Orders, Peace Bonds and Warrants of Committal. The recordings on all police information systems will include both pending charges and convictions.
3. It is recommended that all police agencies that provide a summary of arrests to women's advocacy or victim service programs, specifically identify all cases of partner abuse, and include the name, address and telephone number (if applicable) of the victim in the summary provided.
4. It is recommended that all police agencies providing information on cases of partner abuse to women's advocacy or victim service programs, include those cases where the accused was released on an appearance notice, promise to appear, or undertaking or recognizance without conditions.
5. It is recommended that all Magistrates and Hearing Officers in Manitoba ensure that copies of all Undertakings, Recognizances, Peace Bonds and Probation Orders containing orders of protection are forwarded to the victim. In communities where women's advocacy or victim service programs exist, copies of such documents may be delivered to those programs for forwarding to the victim. In all other cases, copies are to be forwarded directly to the victim, along with information outlining the meaning of the order and the reporting of any breaches.

6. It is recommended that the Court remain cognizant of the interest of the public in denouncing partner abuse and all forms of abuse in the determination of applications for judicial interim release, and in the imposition of sentences, particularly when considering the discharge provisions of the Criminal Code of Canada.

7. It is recommended that the Court remain cognizant of the fact that an offender will be released from a period of incarceration after serving two-thirds of the sentence imposed, unless strong and compelling circumstances exist for the continuing detention of the offender and that those offenders serving a period of incarceration in a provincial institution will not be subject to any type of mandatory supervision unless the original sentence imposed included a period of probation.

8. It is recommended that the Court give due consideration to applications, without notice, for orders of prohibition and non-molestation under the Family Maintenance Act when a woman has sought refuge in a shelter or safe home.

9. It is recommended that in cases where an Interim Order of prohibition or non-molestation has been obtained under The Family Maintenance Act, the applicant need not be required to adduce evidence of further and continuing abuse upon any application for a final Order or Judgment. The evidence in support of the initial application shall apply *mutatis mutandis* in the final hearing and need not be adduced *vive voce* if previous affidavit evidence is available.

10. It is recommended that the Court provide a certified copy of any and all orders of prohibition and non-molestation to the applicant whenever such an order has been granted. It is further recommended that the service of such orders be effected via self-addressed stamped envelopes deposited with the Court office when submitting any such orders for signing by a judge, similar to the requirements relating to the service of Divorce Judgments.

11. It is recommended that a standard notice be developed by the Court, to be attached to any orders of prohibition or non-molestation advising the person subject to the order that any breach of the order constitutes an offence.

12. It is recommended that in all applications for custody and/or access that the Court acknowledge the impact of domestic violence upon children. In any case where access is granted in such situations, due consideration should be given to specified and/or supervised access.

13. It is recommended that programs be established to provide transportation and supervision of children when access has been granted in cases where domestic violence has occurred.

14. It is recommended that in all cases where a support order is granted and the payee is in receipt of income assistance that the income assistance office provide the full budgetary entitlement directly to such person, and that the payments of support be made by the payor through the Maintenance Enforcement Program.

M. REGIONAL JUSTICE COMMITTEES

1. Establishment

It is recommended that Regional Justice Committees be established throughout Manitoba.

The concept of Regional Justice Committees is not a new one. In fact, the Northern Regional Justice Committee, based in Thompson, is well-established. Similar committees have existed from time to time in other areas of the province.

Regional Justice Committees would be composed of key individuals from local police departments, the Crown and defence bar, Probation Services, correctional and parole personnel, Hearing Officers, the judiciary, and victim service programs.

Regional Justice Committees facilitate communication between all components of the criminal justice system and can benefit from community input. Particular concerns can be addressed and options for the resolution of issues can be examined. Certainly, a comprehensive response to domestic violence would be facilitated by the existence of Regional Justice Committees.

N. CONTROL OF FIREARMS AND AMMUNITION

1. Orders of Prohibition

It is recommended that in all cases of partner abuse involving any type of violence towards the victim, the Court impose a condition that the offender be prohibited from possessing any firearms, ammunition or explosive substances. This condition will be imposed both in cases of judicial interim release and upon the sentencing of the offender.

The safety of the victim must be the paramount consideration in all cases of partner abuse. Remedies that are available to the Court to afford as much protection as possible for the victim must be employed at each stage of proceedings.

The provisions of the Criminal Code of Canada state that when an offender is convicted of an indictable offence where violence against another person was used or threatened, and the maximum sentence for that offence is ten years or more, in addition to any other punishment imposed, the Court shall make an order prohibiting the offender from having in his possession any firearms, ammunition or explosive substances. During the consultations, some concern was expressed as to whether or not the Court was fulfilling that obligation.

In addition to the mandatory provisions of the C.C.C., the Court also has jurisdiction to make orders of prohibition in other cases. Such orders are relevant in all cases of partner abuse where violence toward the victim has occurred.

CONTROL OF FIREARMS AND AMMUNITION

2. Firearms Acquisition Certificates

It is recommended that a standard policy and procedure be applied by all firearms officers in any application for a Firearms Acquisition Certificate throughout Manitoba and that the minimum standards outlined below be incorporated into the policy and procedure.

Procedures for Processing of Applications for a Firearms Acquisition Certificate:

- Require all applicants to produce a minimum of two means of identification, one of which has the signature of the applicant.
- Require all applicants to complete a standard supplementary information form containing the following particulars:
 - reasons for desiring a Firearms Acquisition Certificate,
 - type of firearms the applicant wishes to acquire,
 - whether or not the applicant currently owns any firearms, and if so, the type,
 - outline of the applicant's knowledge on safe storage of firearms and ammunitions, and how any acquired firearms and ammunition would be stored,
 - complete addresses for the previous five years,
 - whether or not the applicant has been convicted of an offence within the previous five years, and particulars of the circumstances,
 - whether or not any orders of protection have been pronounced against the applicant, and if so, particulars of the circumstances,

- whether or not the applicant has ever been refused a Firearms Acquisition Certificate, Firearm Registration Certificate, Restricted Weapon Registration Certificate or Firearm Permit; or whether any such Certificates or Permits previously issued to the applicant have been revoked,
- whether or not the applicant has ever been prohibited by a Court from possessing any weapons, ammunition or explosive substances, and if so, the circumstances,
- whether or not the applicant has been under any treatment for emotional problems or mental disorders within the previous five years, and if so, particulars including the professional(s) providing treatment,
- the names, addresses and telephone numbers of three reference persons, and the relationship, if any, of those persons to the the applicant.
- Check all police information systems, including CPIC and local information systems, to determine whether or not the applicant has been convicted of offences and, if so, the nature of those offences; whether there are any pending charges against the applicant; and the existence of any orders of protection. If the applicant resides in another jurisdiction or resided in another jurisdiction during the previous five years, attempt to obtain particulars from other police information systems in those areas.
- Contact with each reference person will be established to obtain relevant information concerning the applicant
- A thirty day waiting period will be required prior to the issuance of any Firearms Acquisition Certificate.

In Manitoba, at present, any applicant for a Firearms Acquisition Certificate (FAC) must complete a standard application form which reflects required federal standards. This form requests the applicant to indicate whether or not he has been convicted of an offence of violence or treated for a mental disorder associated with violence in the previous five years; has been prohibited by a court from possessing firearms, ammunition or explosives; has ever been refused a FAC or other certificate or permit; or has had previous certificates or permits

revoked. The form also requests the applicant to indicate if he has completed a course in firearms safety. In most instances, the applicant is not required to provide further information.

Under section 106(9) of the Criminal Code of Canada, a firearms officer may require the applicant to submit such further information "as may reasonably be regarded as relevant for the purpose of determining whether there is any matter that might render it dangerous for the safety of the applicant or of any other person if the applicant acquired a firearm."

The additional data to be obtained by the use of a standard supplementary information form would allow for a comprehensive determination of safety issues.

CONTROL OF FIREARMS AND AMMUNITION

3. Provincial Legislation

It is recommended that the government of Manitoba pursue the enactment of provincial legislation supplemental to the firearms control provisions of the Criminal Code of Canada.

Supplemental legislation enacted by the province pertaining to the ownership and possession of firearms and ammunition would enhance the current firearms control provisions of the Criminal Code of Canada.

Issues to be addressed include the possibility of a licensing system for the ownership of firearms, the requirement of a permit with photograph identification for the acquisition and carrying of both firearms and ammunition, and additional criteria for the granting of FACs and permits.

CONTROL OF FIREARMS AND AMMUNITION

4. Amendments to the Criminal Code of Canada

It is recommended that the government of Manitoba endorse proposed amendments to the Criminal Code of Canada designed to ensure stricter firearms control.

Further consideration must be given to proposals such as the necessity of a Firearms Acquisition Certificate for the acquisition of both firearms and ammunition, and the requirement of a permit for the acquisition and carrying of all firearms and ammunition (including those acquired prior to January 1, 1979).

In addition, the denial of FACs and permits to all persons who have been convicted of crimes of violence must be endorsed.

O. MEDICAL RESPONSE

1. Medical Staff Education

It is recommended that all medical staff in Manitoba receive adequate training in the social dynamics of domestic violence. The training will be included in the curriculum for medical and nursing students and for nurses and doctors as in-service courses at regular intervals.

Education and awareness of the social dynamics of domestic violence for medical staff is critical. Many women who attend for medical treatment may not disclose how any injuries were sustained, or they may not even be aware of the fact that they are in an abusive relationship. Education leading to an understanding of the complexity of the issues in cases of domestic violence will lead to greater detection and better responses.

Education in the social dynamics of domestic violence to be presented to medical and nursing personnel must involve planning and presentation from key victim resources, including women's shelters and court advocacy programs. Experienced medical and nursing personnel should also be involved in the planning and presentation. Written material must be developed to complement the training component.

All medical and nursing personnel, including new staff and existing staff should be encouraged to receive training in the social dynamics of and appropriate responses to domestic violence by the end of 1992.

MEDICAL RESPONSE

2. Medical Protocol for Domestic Violence

It is recommended that a Medical Protocol be developed and adhered to by all medical staff (emergency wards, hospitals and medical clinics) in Manitoba and that the minimum standards outlined below be incorporated into the Medical Protocol.

A protocol for medical staff is necessary to ensure that the tenets of consistency, communication and commitment apply throughout the province in responding to domestic violence.

Medical Protocol:

- Look for identifying signs of physical, sexual and psychological abuse when attending to women in medical facilities.
- Assess the needs of the woman and whenever possible, obtain information and advise her of any available support services, including shelters. Discuss the option of police intervention.
- Prepare a detailed medical report that may be used in any subsequent police investigation and court proceedings. A comprehensive report may eliminate the need for court appearances by medical staff.
- With the consent of the patient, involve the services of the social work staff to provide further assistance to the woman.

Note: The Department of Social Work at the Winnipeg Grace Hospital has prepared a draft detailed protocol for hospital staff (doctors, nurses and social workers) which utilizes information from existing protocols in Canadian hospitals. That protocol has been used in developing the above minimum standards. The document is a comprehensive one and should be shared with other hospitals in the province to adopt a uniform and standard in-depth protocol to be implemented by all medical facilities in the province.

P. INCOME SECURITY RESPONSE

1. Minimum Allowable Stay in Shelters

It is recommended that Manitoba Family Services/Income Security increase the initial allowable stay for a woman at a Shelter to thirty days from the current ten days.

A woman's stay at a shelter occurs at a time of crisis and considerable stress for both her and any children she may have. Shelter staff frequently advised that during her first few days at a shelter, a woman is often in a state of shock and not able to fully consider various options that may be presented to her. It is a time when a decision of whether or not to initiate police involvement (if that has not already occurred) is joined by many other dynamics. The woman will have to decide what to do after her stay at the shelter.

If there are children involved, the decision becomes much more complex as their needs have to be addressed. The necessity of both the woman and her children receiving support and assistance from shelter staff is critical to assist her in being able to reach decisions. The issue of whether to obtain an order of protection must be addressed, and if such an application is made, the time needed to receive the order must be resolved. Finally, if the woman chooses not to return to the residence occupied by her abusive partner, then an appropriate housing facility must be secured.

The current allowable stay at a shelter of ten days does not suffice in terms of the practical and emotional needs of the woman and her children. Currently, any extension of the ten day maximum requires approval from Manitoba Family Services/Income Security and compelling reasons must be provided. In fact, there is a variation in procedures across the province, with some extensions granted only on a day-to-day basis, while other requests may receive up to a one week extension.

A time period of thirty days for the initial allowable stay is advocated to allow an opportunity for women to make decisions and to facilitate the transition from the shelter to the existing residence or a new one. This is not to say that all women will require the full thirty days and the final decision of the length of stay should rest with them in consultation with shelter staff. However, the burden on both shelter staff and the

woman in the existing procedure of having to obtain approval for extensions would be alleviated.

A review of the minimum allowable stay at shelter facilities in Canada reveals that most jurisdictions have an initial stay which is considerably longer than Manitoba's current ten day stay. In Ontario, for example, the allowable stay at shelters is thirty days according to city social service funding policies, but some shelters, by way of internal policy, have no maximum length of stay and use provincial funding after funding from the city expires. On average, the women stay at a shelter for three weeks.

In addition to an extension of the initial allowable stay for women in shelters, the establishment of additional second-stage housing should be reviewed.

INCOME SECURITY RESPONSE

2. Provision of Telephone Service to Victims of Domestic Violence

It is recommended that Manitoba Family Services/Income Security implement a policy of including the cost of telephone services as a basic need for victims of domestic violence.

For women who are or have been in an abusive relationship, having immediate access to telephone services is of utmost importance. The need for protection is paramount and cannot be adequately addressed if a woman has no outside line of communication from her residence.

For the woman who needs assistance in an emergency, the absence of a telephone may very well mean that no request for assistance can be made until she is able to leave the residence or until the abusive partner has left. This would apply in situations both where the abusive partner resides with the woman or where the parties are separated.

At present, Income Security will cover the costs of housing and other essentials for women who are eligible. However, telephone services are not considered to be a basic need. To deny telephone services to women who are or have been in abusive relationships can place them in an extremely vulnerable and potentially dangerous situation. The provision of a telephone must be included as a basic necessity for these women.

INCOME SECURITY RESPONSE

3. Transportation to Shelters and Emergency Housing

(a) It is recommended that the transportation costs for women and their children to attend Shelters and/or Emergency Housing be covered by Income Security/Family Dispute Services, Department of Family Services.

(b) It is recommended that for women who reside on Reserves and do not fall under the jurisdiction of provincial Income Security/Family Dispute Services, transportation costs for themselves and their children to shelters and/or Emergency Housing be covered by the Band Council where they reside.

The ability to leave an abusive situation should not be dictated by the availability of transportation. For women who reside in smaller centres in the province, shelter facilities are often a great distance away from their homes. Many women do not have their own means of transportation or the financial resources to obtain transportation. In some locations, the police are able to escort women to a place of safety, but that option is not always available. In addition, it may take the police quite some time to travel to remote communities.

Presently, there is no guarantee that Income Security/ Family Dispute Services will cover necessary transportation costs for women who fall under their jurisdiction, although that can occur on occasion.

Women residing on Reserves are entitled to leave the community, with their children, to escape from an abusive relationship, if that is the option chosen by them. In such situations, transportation costs to a shelter/safe housing should be covered by the Band Council. If not, women may have to remain in a dangerous situation.

The larger issue of adequate shelters/safe houses in remote and isolated communities also must be addressed. Women residing in these areas do not have a real choice to leave an abusive relationship when seeking safety at a shelter would mean having to uproot themselves and their children and travel up to several hundred miles away from their home. Initial progress in this area is being made by upcoming shelters at Fisher River, Pukatawagan and Shamattawa Reserves.

In addition, there are many other areas in the province which are isolated and require resources. In the family violence fund allocated by the Federal Government for shelter housing, priority should be given to the establishment of such facilities in remote and isolated communities.

Q. EDUCATION RESPONSE

1. School Curriculum

It is recommended that educational institutions in Manitoba integrate a mandatory domestic violence educational component into the school curriculum for elementary, junior high and high schools.

The commitment to long term solutions in eradicating domestic abuse must address the need for youth to be educated in the social causes and consequences of relationship violence. The attitudes and resultant practices of youth, who will become the adults of tomorrow, will shape the future of society. As discussed by the Standing Committee Report, House of Commons (1991)*:

The school is one of the main socializers of children in our society. educators are well positioned to increase students' knowledge, awareness and comfort level with such subjects as violence, sexuality, relationships, and gender inequality. Appropriate classroom instruction can break the silence and dispel the myth that violence in the family or in other intimate relationships is a private matter, and thereby give students permission to talk about the issues (P. 18).

The above report from the House of Commons makes reference to a curriculum guide entitled "Thumbs Down, A Classroom Response to Violence Against Women", developed by the Canadian Teachers' Federation for all school levels from kindergarten to grade 12 (P. 19).

In addition, resource material has been developed in Manitoba by the Brandon Y.M.C.A. Westman Women's Shelter for junior and senior high school students. The curriculum guide entitled "Relationship Violence", currently in draft form, is being tested on a pilot project basis in selected schools in Brandon and surrounding area to determine its utility for the classroom.

* Standing Committee on Health and Welfare, War Against Women, Social Affairs, Seniors and the Status of Women, House of Commons Canada, First Report, June 1991.

R. FOLLOW-UP TO THE DOMESTIC VIOLENCE REVIEW REPORT

1. Creation of Implementation Committee to Respond to Report

It is recommended that the Minister of Justice establish an Implementation Committee composed of key government and community resources to assist in the response and development of a work plan for the recommendations contained in the Domestic Violence Review Report.

The recommendation for an Implementation Committee acknowledges both the volume of the recommendations and the planning and development necessary to implement them. A small committee, with government and community expertise, would assist in the action plan to be undertaken in response to the Domestic Violence Review. The committee can also provide assistance in developing further policies and protocols necessary in the overall response to domestic violence in Manitoba.

CONCLUSIONS:

While the ultimate goal is the complete intolerance of partner abuse and indeed all forms of family violence, the Domestic Violence Review has been faced with the reality of its presence in 1991. Official statistics representing those cases reported to the police, reveal that the incidence of partner abuse is considerable. We also know that there are untold numbers of women who never report the abuse to police because of the complex social and interpersonal dynamics involved. Further, for those women who do report abuse and enter the legal system, there are issues and concerns which have been identified for examination.

The Domestic Violence Review, in recognition of the high incidence of partner abuse, stresses the necessity of sanctions by the criminal justice system. As one offender stated during the consultation process, "when you think you can get away with it, you'll continue".

The Review has forwarded recommendations and initiatives to address both the issues of the safety of abused women and sensitive treatment throughout the criminal justice system. Policies, standards and protocols set forth have the intent purpose of achieving these objectives, and working toward the best possible responses to abuse occurring within relationships. An overall purpose is to encourage all women to report abuse. Hidden violence within relationships is destructive for all of society, but most of all, it impacts significantly on women and children.

On a larger scale, the four cornerstones of community, consistency, communication and commitment have been identified. These principles can function to not only improve responses by the justice system, but also in working toward an environment where partner abuse is not accepted. This orientation calls for involvement and action at all levels and between all components of the community in a comprehensive approach.

APPENDIX 1

SUMMARY OF RECOMMENDATIONS

APPENDIX 1

SUMMARY OF RECOMMENDATIONS

A. RECOMMENDATION OF PRINCIPLE

It is recommended that the Manitoba government formally declare that the province and its residents advocate and practice living in a domestic violence-free environment, where family violence and partner abuse are not acceptable and will be acted upon as criminal offences.

B. RESPONSE TO VICTIMS

It is recommended that Community Advocacy Response Teams be created to provide advocacy, support and assistance to women and their children immediately after police have responded to a situation of domestic violence.

It is recommended that ongoing support groups and counselling services be made available for abused women and their children.

It is recommended that a Victim Impact Statement Program be instituted in Manitoba on a permanent basis.

C. RESPONSE TO ABUSERS

It is recommended that an educational program for men who abuse their partners be developed and that this program be a component of services offered by Probation Services, Manitoba Justice.

D. CHARGING DIRECTIVE

It is recommended that the Minister of Justice issue a directive to all police agencies in the province of Manitoba to institute, in all cases of partner abuse, charges under the Criminal Code of Canada and/or any other applicable legislation when there are reasonable and probable grounds to believe that an offence has been committed, regardless of the relationship between the offender and the victim.

E. POLICE RESPONSE

It is recommended that all policing agencies in Manitoba be required to receive adequate training in the social dynamics of domestic violence and education of the policy directives and protocols for responding to such cases. The training will be provided both for police recruits, as part of their basic training, and for all officers as in-service courses at regular intervals.

It is recommended that a Dispatch Protocol be developed and adhered to by any and all personnel performing the dispatch function at all police departments in the province. It is further recommended that the minimum standards outlined below be incorporated into the Dispatch Protocol.

It is recommended that a Police Protocol be developed and adhered to by all police agencies in Manitoba in their response to cases of partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Police Protocol.

It is recommended that all police agencies in Manitoba record particulars of all charges and convictions on the Canadian Police Information Centre (CPIC) and on their individual information systems, whether they be on a computer or manual file, within 24 hours of receiving such information.

It is recommended that all police agencies in Manitoba establish a written policy acknowledging and prioritizing the victim's right to privacy and security in any release of information to the media.

It is recommended that all police agencies in Manitoba implement a policy requiring responses to requests for assistance to prevent a breach of the peace and that all efforts be made to ensure the safety of all parties during such responses.

It is recommended that the police give priority to responding to the abuse committed against a woman and that any unrelated outstanding warrants for her arrest that come to their attention as the result of their intervention be dealt with at a later time.

It is recommended that the Manitoba Police Commission develop regulations containing standards for the recruitment and training of all municipal police officers, special constables and other law enforcement officers in Manitoba, and that these regulations promote on-going training for all officers at regular intervals in the social dynamics and protocols for the response to cases of domestic violence. It is further recommended that these regulations be adopted by the government of Manitoba.

It is recommended that the Manitoba Police Commission develop regulations containing standards and protocols for police response to partner abuse in Manitoba, and that these standards and protocols emphasize the importance of instituting charges under the Criminal Code of Canada and/or any other applicable legislation when there are reasonable and probable grounds to believe that an offence has been committed, regardless of the relationship between the offender and the victim. It is further recommended that these regulations be adopted by the government of Manitoba.

It is recommended that The Provincial Police Act be amended to grant specific authority to the Manitoba Police Commission to monitor and audit police agencies under its jurisdiction to ensure compliance with policies, protocol, and standards contained in regulations under The Provincial Police Act. It is further recommended that The Provincial Police Act be amended to include penalty provisions for non-compliance with its provisions and regulations.

F. CROWN RESPONSE

It is recommended that all Crown attorneys in the province be required to receive adequate training in the social dynamics of domestic violence and education of the policy directives and protocols for the prosecution of such cases. The training will be provided both for new staff as part of their orientation and as in-service sessions for all Crown attorneys at regular intervals.

It is recommended that the Crown institute a policy of prosecuting all offences arising as a result of partner abuse, including those cases where a victim's testimony is not available when other evidence of the offence exists.

It is recommended that a Crown Protocol be developed and adhered to by all Crown Attorneys in Manitoba in response to cases of partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Crown Protocol.

G. LEGAL AND PARALEGAL ASSISTANCE FOR VICTIMS

It is recommended that a legal advocacy office be established for women in abusive relationships. This office will include a toll-free telephone line.

It is recommended that victim service programs in Manitoba establish a procedure, in liaison with the police and the Crown, whereby victim services will assist in notifying victims of any pertinent facts relating to charges of partner abuse as they proceed through the criminal justice system from police involvement to court disposition.

It is recommended that Legal Aid Manitoba enhance its paralegal component to assist women who have been the victims of abuse in obtaining information with respect to their legal rights and options, and to facilitate the legal representation of women.

It is recommended that the Women's Advocacy Program operating in Winnipeg be located with the existing Victims Programs in the Manitoba Department of Justice.

It is recommended that the current resource needs of the Women's Advocacy Program be examined.

H. COURT RESPONSE

It is recommended that all Judges, Magistrates and Hearing Officers in Manitoba receive adequate training in the social dynamics of domestic violence. The training will be provided for both new appointees as part of their basic orientation and as in-service courses for incumbents at regular intervals.

It is recommended that due consideration be given by the court to excluding all or any members of the public from the proceedings in serious or sensitive cases of partner abuse.

It is recommended that all efforts be taken to expedite the prosecution of partner abuse throughout the province.

It is recommended that the Family Violence Court Implementation Committee, in consultation with family violence service and resource groups, develop a plan for expanding portions of the Family Violence Court to centres outside of Winnipeg, where feasible.

It is recommended that the Minister of Justice discuss with The Court of Queen's Bench the development of the Family Violence Court concept at that level.

It is recommended that when a period of probation is imposed in cases of partner abuse, the offender is subject to the supervision of a probation officer and that, in addition to any orders of protection, the Court give due consideration to conditions that the offender be prohibited from possessing any firearms, ammunition or explosive substances; that the offender attend, participate in and complete domestic violence programming as directed by Probation Services; and that the offender make restitution or reparation to the victim for actual loss or damage caused as the result of the offence. It is further recommended that the period of probation be a minimum of two years.

It is recommended that an examination of the necessity of preliminary hearings be conducted, and that other alternatives be explored.

I. CORRECTIONS/PROBATION RESPONSE

It is recommended that all Manitoba correctional and probation staff be required to receive adequate training in the social dynamics of domestic violence. The training will be provided both for new staff as part of their orientation and for existing staff as in-service courses at regular intervals.

It is recommended that a Corrections Protocol be developed and adhered to by all provincial and federal correctional institutions in Manitoba in the response to cases involving partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Corrections Protocol.

It is recommended that all correctional institutions in Manitoba offer educational programming to all offenders convicted of partner abuse, in addition to any other available programming.

It is recommended that a Probation Protocol be developed and adhered to by all probation personnel in Manitoba, in their response to partner abuse. It is further recommended that the minimum standards outlined below be incorporated into the Probation Protocol.

It is recommended that Probation Services offer an educational program to all offenders convicted of partner abuse to be complemented by intensive programming in appropriate cases. It is further recommended that the educational program be available for offenders in correctional institutions.

It is recommended that in all cases where an offender breaches a condition to attend, participate in and complete domestic violence programming as directed by Probation Services, a charge of breach of probation be prosecuted, and appropriate penalties imposed.

J. PAROLE RESPONSE

It is recommended that the Correctional Service of Canada and the National Parole Board establish and implement a comprehensive policy pertaining to the acknowledgement and protection of the rights of victims and their families, and access to information by them. It is further recommended that the minimum standards which are outlined below be adopted.

It is recommended that pardons granted under the Criminal Records Act for offences committed under the Criminal Code of Canada not be operative with respect to any application the pardoned person might make for a firearms acquisition certificate and with respect to determinations in the prosecution of any subsequent offences alleged to have been committed by that person under the Criminal Code of Canada.

K. ORDERS OF PROTECTION/RESTRAINING ORDERS

It is recommended that in all cases of partner abuse when an offence is alleged to have been committed under the Criminal Code of Canada and/or any other applicable legislation that the police give due regard to their powers of arrest, whether the alleged offence be summary conviction, hybrid, or indictable in nature.

It is recommended that in all cases of partner abuse that release of the accused by way of an appearance notice, promise to appear, summons, or undertaking without conditions be exercised in only exceptional circumstances, and that priority be given to ensuring safety for the victim in any application for judicial interim release. Should the accused be granted judicial interim release, conditions that he have no contact or communication with the named victim, and that he not attend any premises where she may be residing or employed, until further order of the Court, are to be considered by the Hearing Officer, Magistrate, Justice or Judge in each and every case.

It is recommended that all police agencies in Manitoba record particulars of all orders of protection on the Canadian Police Information Centre (CPIC) and on their individual information systems, whether they be on a computer or manual file, within 24 hours of receiving confirmation of the granting of any such order.

It is recommended that all police agencies in Manitoba fully investigate all allegations of breaches of orders of protection, and that the appropriate charge(s) be laid when there are reasonable and probable grounds to believe an offence has occurred.

It is recommended that in all cases where an accused has been charged with breaching an order of protection imposed as a condition of an Undertaking or Recognizance, that the Crown invoke the reverse onus provisions of The Criminal Code of Canada in any application for judicial interim release and that the Crown give due consideration to opposing such applications.

It is recommended that the Crown prosecute all charges arising from breaches of orders of protection, whether imposed as conditions of any Undertaking, Recognizance, Probation Order, Peace Bond, Order under The Family Maintenance Act, or any other applicable legislation, where there is sufficient evidence to prosecute the charges.

It is recommended that procedures be established to expedite the process of obtaining a peace bond under the existing provisions of the Criminal Code of Canada and that adjournments of the hearing of any application for a peace bond be granted in only exceptional circumstances. It is further recommended that all Hearing Officers and Magistrates in Manitoba afford all persons the right to apply for a peace bond.

It is recommended that The Family Maintenance Act of Manitoba be amended to delete application of the penalty provisions with respect to breaches of orders of prohibition and non-molestation, thus enabling those offences to be prosecuted under the Criminal Code of Canada (s. 127 - Disobeying Order of Court).

It is recommended that the Criminal Code of Canada be amended to make all offences of breaches of court orders, including breaches of any undertakings or recognizances and breaches of probation orders, indictable offences within the absolute jurisdiction of a Provincial Court Judge.

It is recommended that the government of Manitoba pursue enactment of provincial legislation enabling any person who has reasonable grounds to fear harm from another person to obtain an order of protection, expeditiously (including without notice when warranted) and without cost to any such person.

L ADMINISTRATION OF JUSTICE - GENERAL

It is recommended that all components of the criminal justice system reinforce to offenders at each stage of the proceedings that it is the responsibility of the criminal justice system to prosecute all offences involving partner abuse. This will include at the time of arrest, applications for judicial interim release, preliminary hearings, trials, and sentencing.

It is recommended that any and all offences of partner abuse be identified as such, by a common denotation, on the Canadian Police Information Centre, all local police information systems, and all copies of all Informations, Indictments, Undertakings, Recognizances, Probation Orders, Peace Bonds and Warrants of Committal. The recordings on all police information systems will include both pending charges and convictions.

It is recommended that all police agencies that provide a summary of arrests to women's advocacy or victim service programs specifically identify all cases of partner abuse, and include the name, address and telephone number (if applicable) of the victim in the summary provided.

It is recommended that all police agencies providing information on cases of partner abuse to women's advocacy or victim service programs, include those cases where the accused was released on an appearance notice, promise to appear, or undertaking or recognizance without conditions.

It is recommended that all Magistrates and Hearing Officers in Manitoba ensure that copies of all Undertakings, Recognizances, Peace Bonds and Probation Orders containing orders of protection are forwarded to the victim. In communities where women's advocacy or victim service programs exist, copies of such documents may be delivered to those programs for forwarding to the victim. In all other cases, copies are to be forwarded directly to the victim, along with information outlining the meaning of the order and the reporting of any breaches.

It is recommended that the Court remain cognizant of the interest of the public in denouncing partner abuse and all forms of abuse in the determination of applications for judicial interim release, and in the imposition of sentences, particularly when considering the discharge provisions of the Criminal Code of Canada.

It is recommended that the Court remain cognizant of the fact that an offender will be released from a period of incarceration after serving two-thirds of the sentence imposed, unless strong and compelling circumstances exist for the continuing detention of the offender and that those offenders serving a period of incarceration in a provincial institution will not be subject to any type of mandatory supervision unless the original sentence imposed included a period of probation.

It is recommended that the Court give due consideration to applications, without notice, for orders of prohibition and non-molestation under the Family Maintenance Act when a woman has sought refuge in a shelter or safe home.

It is recommended that in cases where an Interim Order of prohibition or non-molestation has been obtained under The Family Maintenance Act, the applicant need not be required to adduce evidence of further and continuing abuse upon any application for a final Order or Judgment. The evidence in support of the initial application shall apply *mutatis mutandis* in the final hearing and need not be adduced *vive voce* if previous affidavit evidence is available.

It is recommended that the court provide a certified copy of any and all orders of prohibition and non-molestation to the applicant whenever such an order has been granted. It is further recommended that the service of such orders be effected via self-addressed stamped envelopes deposited with the court office when submitting any such orders for signing by a judge, similar to the requirements relating to the service of Divorce Judgments.

It is recommended that a standard notice be developed by the Court, to be attached to any orders of prohibition or non-molestation advising the person subject to the order that any breach of the order constitutes an offence.

It is recommended that in all applications for custody and/or access that the Court acknowledge the impact of domestic violence upon children. In any case where access is granted in such situations, due consideration should be given to specified and/or supervised access.

It is recommended that programs be established to provide transportation and supervision of children when access has been granted in cases where domestic violence has occurred.

It is recommended that in all cases where a support order is granted and the payee is in receipt of income assistance that the income assistance office provide the full budgetary entitlement directly to such person, and that the payments of support be made by the payor through the Maintenance Enforcement Program.

M. REGIONAL JUSTICE COMMITTEES

It is recommended that Regional Justice Committees be established throughout Manitoba.

N. CONTROL OF FIREARMS AND AMMUNITION

It is recommended that in all cases of partner abuse involving any type of violence towards the victim, the Court impose a condition that the offender be prohibited from possessing any firearms, ammunition or explosive substances. This condition will be imposed both in cases of judicial interim release and upon the sentencing of the offender.

It is recommended that a standard policy and procedure be applied by all firearms officers in any application for a Firearms Acquisition Certificate throughout Manitoba and that the minimum standards outlined below be incorporated into the policy and procedure.

It is recommended that the government of Manitoba pursue the enactment of provincial legislation supplemental to the firearms control provisions of the Criminal Code of Canada.

It is recommended that the government of Manitoba endorse proposed amendments to the Criminal Code of Canada designed to ensure stricter firearms control.

O. MEDICAL RESPONSE

It is recommended that all medical staff in Manitoba receive adequate training in the social dynamics of domestic violence. The training will be included in the curriculum for medical and nursing students and for nurses and doctors as in-service courses at regular intervals.

It is recommended that a Medical Protocol be developed and adhered to by all medical staff (emergency wards, hospitals and medical clinics) in Manitoba and that the minimum standards outlined below be incorporated into the Medical Protocol.

P. INCOME RESPONSE

It is recommended that Manitoba Family Services/Income Security increase the initial allowable stay for a woman at a Shelter to thirty days from the current ten days.

It is recommended that Manitoba Family Services/Income Security implement a policy of including the cost of telephone services as a basic need for victims of domestic violence.

It is recommended that the transportation costs for women and their children to attend Shelters and/or Emergency Housing be covered by Income Security/Family Dispute Services, Department of Family Services.

It is recommended that for women who reside on Reserves and do not fall under the jurisdiction of provincial Income Security/Family Dispute Services, transportation costs for themselves and their children to shelters and/or Emergency Housing be covered by the Band Council where they reside.

Q. EDUCATION RESPONSE

It is recommended that educational institutions in Manitoba integrate a mandatory domestic violence educational component into the school curriculum for elementary, junior high and high schools.

R. FOLLOW-UP TO THE DOMESTIC VIOLENCE REVIEW REPORT

It is recommended that the Minister of Justice establish an Implementation Committee composed of key government and community resources to assist in the response and development of a work plan for the recommendations contained in the Domestic Violence Review Report.

APPENDIX 2

PROVINCIAL CONSULTATIONS

APPENDIX 2

PROVINCIAL CONSULTATIONS

<u>Organization</u>	<u>Location</u>
Aboriginal Court Worker Program of Manitoba	Winnipeg
Aboriginal Women of Manitoba	Winnipeg
Adult Correctional Services, Mb. Justice	Winnipeg
Adult Corrections, Mb. Justice	Winnipeg
Agape House	Steinbach
Age & Opportunity Elder Abuse Resource Centre	Winnipeg
Alpha House Project, Inc.	Winnipeg
Altona Town Police	Altona
Assembly of Manitoba Chiefs	Winnipeg
Aurora House	The Pas
Brandon City Police	Brandon
Canadian Correctional Services - Federal Parole	Winnipeg
Chief Provincial Firearms Office, Mb. Justice	Winnipeg
Community and Youth Corrections (Probation Office) Mb. Justice	Winnipeg
Community and Youth Corrections (Probation Office) Mb. Justice	The Pas
Community and Youth Corrections (Probation Office) Mb. Justice	Thompson
Community and Youth Corrections (Probation Office) Mb. Justice	Portage la Prairie
Community and Youth Corrections (Probation Office) Mb. Justice	Brandon
Community & Youth Correctional Services, Mb. Justice	Winnipeg
Community & Youth Corrections (Prov. Spouse Abuse Committee)	Winnipeg
Constitutional Law Branch, Mb. Justice	Winnipeg
Corrections Committee	Winnipeg
Court Magistrates, Mb. Justice	Winnipeg
Court Magistrates, Mb. Justice	Thompson
Defence Counsel	Winnipeg
Defence Counsel	The Pas/Flin Flon
Defence Counsel	Brandon
Deloraine Family Violence Group	Deloraine
Elizabeth Fry Society of Manitoba	Winnipeg
Evergreen Spouse Abuse Committee Inc.	Gimli

<u>Organization</u>	<u>Location</u>
Evolve	Winnipeg
Family Dispute Services, Mb. Family Services	Winnipeg
Family Law Branch, Mb. Justice	Winnipeg
Family Violence Court Crown Counsel, Mb. Justice	Winnipeg
Family Violence Court Implementation Committee, Provincial Government	Winnipeg
Flin Flon/Creighton Crisis Centre	Flin Flon
Fort Alexander Indian Band, Social Development	Pine Falls
Fort Garry Women's Resource Centre Inc.	Winnipeg
Genesis House	Winkler
IKWE Justice Society	Winnipeg
Ikwe-Widdjiitiwin Inc.	Winnipeg
Immigrant Women's Association of Manitoba	Winnipeg
Indigenous Women's Collective Inc.	Winnipeg
Inter-Hospital Committee on Family Abuse	Winnipeg
John Howard Society of Manitoba, Inc.	Winnipeg
Judiciary - Court of Queen's Bench	Winnipeg
Judiciary - Provincial Court	Winnipeg
Judiciary - Provincial Court	Thompson
Killarney/District Committee on Family Violence	Killarney
KLINIC Community Health Centre	Winnipeg
Lac du Bonnet Committee on Family Violence	Lac du Bonnet
Law Enforcement Services, Mb. Justice	Winnipeg
Legal Aid Manitoba	Winnipeg
Legal Aid Manitoba	Brandon
Legal Aid Manitoba	The Pas
Legal Aid Manitoba	Thompson
Lundar/Eriksdale/Ashern Wife Abuse Committee	Ashern
Ma Mawi-Wi-Chi-Itata Centre Inc./Family Violence Centre	Winnipeg
Manitoba Action Committee on Status of Women	Winnipeg
Manitoba Action Committee on Status of Women	Brandon
Manitoba Advisory Council on Status of Women	Winnipeg
Manitoba Advisory Council on Status of Women	Brandon
Manitoba Association of Registered Nurses	Winnipeg

<u>Organization</u>	<u>Location</u>
Manitoba Association of Women & the Law	Winnipeg
Manitoba Law Society - Family Law Subsection	Winnipeg
Manitoba Police Commission	Winnipeg
Manitoba Women's Directorate	Winnipeg
Manitoba Women's Directorate	Portage La Prairie
Manitoba Women's Directorate	The Pas
Minnedosa / Area Committee on Wife Abuse	Minnedosa
Morden Town Police	Morden
Native Alcohol and Drug Abuse Program	Cross Lake
Native Women's Transition Centre	Winnipeg
Nogom Ikwe	Pine Falls
North East Committee on Family Violence Inc.	Pine Falls
North End Women's Centre Inc.	Winnipeg
Northern Regional Justice Committee	Thompson
Northern Women's Resource Service	Flin Flon
Nova House	Selkirk
Office of the Chief Medical Examiner, Mb. Justice	Winnipeg
Opasquiak Women's Resource	The Pas
Original Women's Network	Winnipeg
Osborne House	Winnipeg
Parklands Crisis Centre Inc.	Dauphin
Pluri-elles (Manitoba) Inc.	Winnipeg
Portage Women's Shelter Inc.	Portage la Prairie
Probation Services, Mb. Justice, Abuser Treatment Group	Winnipeg
Public Prosecutions	Winnipeg
Public Prosecutions	Brandon
Public Prosecutions	The Pas, MB
Public Prosecutions	Portage la Prairie
Public Prosecutions	Thompson
RCMP Detachment	The Pas
RCMP Detachment	Flin Flon
RCMP Detachment	Thompson
RCMP Detachment	Brandon

<u>Organization</u>	<u>Location</u>
RCMP Detachment	Snow Lake
RCMP Detachment	Cross Lake
RCMP Detachment	Portage la Prairie
RCMP Headquarters, D Division	Winnipeg
RCMP Investigators Course (Officers from across Manitoba)	Winnipeg
Regional Public Prosecutions, Mb. Justice	Brandon
Reseau Org. de Femmes St-Boniface Inc.	St. Boniface
Russell Committee Against Family Violence	Russell
Samaritan House Ministries Inc.	Brandon
Snow Lake Centre on Family Violence Inc.	Snow Lake
Social Planning Council of Winnipeg	Winnipeg
Special Prosecutions & Programs, Mb. Justice	Winnipeg
Springfield Committee on Family Violence	Dugald
Swan Valley Crisis Centre	Swan River
The Pas Correctional Institution	The Pas
Thompson Crisis Centre Inc.	Thompson
Thompson Victim-Witness Assistance Program	Thompson
Victim Services, Winnipeg Police Department	Winnipeg
Westman Women's Coalition	Brandon
Westman Women's Shelter	Brandon
Winkler Town Police	Winkler
Winnipeg Police Department, Office of the Chief	Winnipeg
Winnipeg Police Department (Veteran Officer In-Service)	Winnipeg
Women in Second Stage Housing Inc.	Winnipeg
Women's Advocacy Program	Winnipeg
Women's Health Clinic	Winnipeg
Women's Post Treatment Centre Inc.	Winnipeg

APPENDIX 3

**CRIMINAL CODE OF CANADA —
SELECTED OFFENCES
PERTAINING TO PARTNER ABUSE**

APPENDIX 3

CRIMINAL CODE OF CANADA - SELECTED OFFENCES PERTAINING TO PARTNER ABUSE

Assault — Application — Consent — Accused's belief as to consent.

265. (1) A person commits an assault when
- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
 - (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
 - (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.
- (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.
- (3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of
- (a) the application of force to the complainant or to a person other than the complainant;
 - (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
 - (c) fraud; or
 - (d) the exercise of authority.
- (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Assault.

266. Every one who commits an assault is guilty of
- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
 - (b) an offence punishable on summary conviction.

Assault with a weapon or causing bodily harm — Definition of "bodily harm".

267. (1) Every one who, in committing an assault,
- (a) carries, uses or threatens to use a weapon or an imitation thereof, or
 - (b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

- (2) For the purposes of this section and section 269 and 272, "bodily harm" means any hurt or injury to the complainant that interferes with the health or comfort of the complainant and that is more than merely transient or trifling in nature.

Aggravated assault — Punishment.

268. (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.
- (2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Unlawfully causing bodily harm.

269. Every one who unlawfully causes bodily harm to any person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Sexual assault — No defence.

271. (1) Every one who commits a sexual assault is guilty of
- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
 - (b) an offence punishable on summary conviction. R.S. 1985, c. 19 (3rd Supp.), s.10.
- (2) [Repealed R.S. 1985, c. 19 (3rd Supp.), s.10]

Sexual assault with a weapon, threats to a third party or causing bodily harm.

272. Every one who, in committing a sexual assault,
- (a) carries, uses or threatens to use a weapon or an imitation thereof,
 - (b) threatens to cause bodily harm to a person other than the complainant,
 - (c) causes bodily harm to the complainant, or
 - (d) is a party to the offence with any other person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Aggravated sexual assault — Punishment.

273. (1) Every one who commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

- (2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and liable to imprisonment for life.

Unlawfully causing bodily harm.

269. Every one who unlawfully causes bodily harm to any person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Uttering Threats — Punishment — Idem.

- 264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat
- (a) to cause death or serious bodily harm to any person;
 - (b) to burn, destroy or damage real or personal property; or
 - (c) to kill, poison or injure an animal or bird that is the property of any person.
- (2) Every one who commits an offence under paragraph (1)(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
- (3) Every one who commits an offence under paragraph (1)(b) or (c)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
 - (b) is guilty of an offence punishable on summary conviction.
- R.S. 1985, c. 27 (1st Supp.), s. 38.

Mischief — Mischief in relation to data — Punishment — Idem — Idem — Idem — Offence — Saving — Idem — Definition of "data".

430. (1) Every one commits mischief who willfully
- (a) destroys or damages property;

- (b) renders property dangerous, useless, inoperative or ineffective;
 - (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
 - (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.
- (2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.
- (3) Every one who commits mischief in relation to property that is a testamentary instrument or the value of which exceeds one thousand dollars
 - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
 - (b) is guilty of an offence punishable on summary conviction.
- (4) Every one who commits mischief in relation to property, other than property described in subsection (3),
 - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
 - (b) is guilty of an offence punishable on summary conviction.

Intimidation — Exception.

423. (1) Every one who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing,
- (a) uses violence or threats of violence to that person or his spouse or children, or injures his property,
 - (b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted upon him or a relative of his, or that the property of any of them will be damaged,

- (c) persistently follows that person about from place to place,
 - (d) hides any tools, clothes or other property owned or used by that person, or deprives him of them or hinders him in the use of them,
 - (e) with one or more other persons, follows that person, in a disorderly manner, on a highway,
 - (f) besets or watches the dwelling-house or place where that person resides, works, carries on business or happens to be, or
 - (g) blocks or obstructs a highway, is guilty of an offence punishable on summary conviction.
- (2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Kidnapping — Forcible confinement — Non-resistance.

279. (1) Every one who kidnaps a person with intent
- (a) to cause him to be confined or imprisoned against his will,
 - (b) to cause him to be unlawfully sent or transported out of Canada against his will, or
 - (c) to hold him for ransom or to service against his will, is guilty of an indictable offence and liable to imprisonment for life.
- (2) Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
- (3) In proceedings under this section, the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by threats, duress, force or exhibition of force. R.S. 1985, c.27 (1st Supp.), s. 39.

Possession of weapon or imitation.

87. Every one who carries or has in his possession a weapon or imitation thereof, for a purpose dangerous to the public peace or for the purpose of committing an offence, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Obstructing justice — Idem — Idem.

139. (1) Every one who willfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,
- (a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or
 - (b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody, is guilty of
 - (c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or
 - (d) an offence punishable on summary conviction.
- (2) Every one who willfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
- (3) Without restricting the generality of subsection (2), every one shall be deemed willfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceedings, existing or proposed,
- (a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;
 - (b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or
 - (c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.